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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 307.

AH HOW alias LOUIE AH HOW, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 9, 1903.

(18958.)

SUPREME COURT OF THE UNITED STATES.

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AH HOW ALIAS LOUIE AH HOW, APPELLANT,

vs.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Ah How, a Chinese and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Ah How, that he may be dealt with according to law

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 *The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies or any or either of them:*

Whereas complaint on oath has been made to me, charging that Ah How was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Ah How wherever he may be found and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence, according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

2½ U. S. commissioner's office, eastern district of New York. The United States of America vs. Ah How. Warrant to apprehend. Bail in $500 taken July 28, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within named Ah How arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

3 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
AH HOW. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Ah How, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Ah How, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

4 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Ah How alias Lou How, by his counsel, claimed to have been born in the United States and to be lawfully entitled and to be and to remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Ah How is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Ah How be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

5 United States district court, eastern district of New York.

UNITED STATES
vs.
AH HOW. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth, in substance, that one Ah How, on

the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Ah How, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the United
6 States and to be lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Ah How was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Ah How, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

7 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Ah How, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceeding before U. S. commissioner. Filed December 29, 1902.

8 UNITED STATES
vs.
AH HOW, ALIAS LOUIE AH HOW.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 15th, 1902.

Appearances: George H. Pettit, esq., United States district att'y, by Mr. Howell; Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant Ah How, alias Louie Ah How, was apprehended on the 23rd day of July, 1902, without a warrant, at the

premises 38 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States
9 Commissioner Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. McMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do; first, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the ground that
10 the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. HOWELL states that the Government's case is in, as per stipulation.

AH HOW, called as a witness on his own behalf, testifies through an interpreter as follows:

Direct examination by Mr. McMANUS:

Q. What is your name?
A. Ah How.
Q. Where were you arrested?
A. Myrtle avenue.
Q. Were you arrested on the 23rd of July?
A. Yes.
Q. What number, Myrtle avenue?
A. 38.
Q. How long have you been in the United States?
A. 20 years.
Q. What business were you engaged—what was your occupation in 1892 and 1893?
A. I was in San Francisco.
Q. When, '92 and '93?
A. Yes.
Q. How long were you in this place in Myrtle avenue?
A. I was not long.
Q. How long?
A. About three years.
11 Q. Three years—and where were you before that?
A. 34 Mott street.
Q. And what business were you engaged in there?

A. Grocery.
Q. And how many years were you engaged in that business?
A. 13 years.
Q. 13 years—always at that same place?
A. Moved to 33 Mott street.
Q. Then you were, from '86 until '99, engaged in business in Mott street, in the city of New York?
A. Yes.
Q. And were you a partner in that concern?
A. Yes, I was a partner.
Q. What business were they engaged in?
A. Grocery.
Q. How much was the value of your interest in that business?
A. $1,000.
Q. How many partners had you?
A. Lee Chung and Tung Koi.
Q. Where were you before that?
A. In a laundry; work in a laundry.
Q. Where?
A. Myrtle avenue.
Q. Where did you go t[illegible]hen you came to the United States first?
A. San Francisco.
12 Q. And what years were you in San Francisco?
A. 8 years of Kuong Suey.
Q. How long were you in San Francisco, then?
A. Five years.
Q. And you left there and came to New York?
A. Yes.
Q. Have you ever been in San Francisco since?
A. No.
Q. What did you mean by the statement that you had been in San Francisco prior to being in Myrtle avenue?
A. Mistake.

Cross-examination by Mr. IZARD:

Q. How old are you?
A. 35.
Q. Where were you born?
A. In China.
Q. Whereabouts in China? What village?
A. Born in China.
Q. What village?
A. Hong Men.
Q. Is your father still living?
A. Yes.
Q. Does he live in that village now?
A. Yes.
Q. Did you go to school in that village before you came to the United States?
A. Never go to school.
Q. How old were you when you left there to come to this country?
A. Fifteen years.

13 Q. And you landed first in San Francisco, is that right?
A. Yes.
Q. Did you have relatives there?
A. My father came with me.
Q. Came with you, and what did you do when you first got to San Francisco in the way of business?
A. I worked at the laundry with my father.
Q. For how many years did you and your father work together in a laundry in San Francisco?
A. Been working four years.
Q. Then what did you do?
A. Then I came to New York.
Q. What did your father do, if you know?
A. He came to New York with me.
Q. And what did your father do when you got to New York, if you remember?
A. Grocery.
Q. Went into business in a Chinese grocery?
A. Yes.
Q. What is your father's name?
A. Louie Shung.
Q. And did he take a thousand dollars' interest in this store, also?
A. Yes.
Q. And you bought a thousand dollars' interest, is that right?
A. No; I didn't have it.
14 Q. You didn't have a thousand dollars, it was your father who had that thousand dollars' interest in the store, was it?
A. Yes.
Q. Then, as a matter of fact, the only interest that your family had in this store was the thousand dollars' interest that your father had?
A. Yes.
Q. And did you work in the store for several years after you came to New York?
A. Yes.
Q. Did your father remain there for several years, also?
A. Yes.
Q. How many years did your father continue to be a partner in that store?
A. About six years.
Q. About six years. Did you work in the store during the whole time that your father was a partner?
A. Yes.
Q. What wages did they pay you?
A. $30 a month.
Q. They paid you that for the whole six years that you worked there, is that right?
A. Yes.
Q. At the end of these six years what did your father do?
A. Go back to China.
Q. And what did you do?
A. Go work in a laundry.

Q. You went to work in a laundry. Then you have been working in laundries ever since?

A. Yes; go to work in a laundry; sometimes I get a laundry for myself.

15 Q. But you have been a laundryman ever since you quit the store when your father left?

A. Yes.

DENNIS O'SULLIVAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. O'Sullivan, do you know this defendant?

A. I do.

Q. And how long have you known him?

A. I have known him two or three years.

Q. When?

A. In 34 Mott street?

Q. When was it, do you know?

A. That is over—about 12 years ago.

Q. And what was the place 34 Mott street?

A. A grocery, Chinese grocery, all kinds.

Q. And what was the name of the firm?

16 A. Kwong Chung Ong.

Q. And how often did you visit there?

A. I was in Mott street for about 23 years; every night after I get through we used to collect in these stores, five or six young men that was always doing business with them there—William Colliton, Mack, and several other men—we used to visit there to carry on the job, just talking and joking.

Q. Then you saw this defendant, you say, about 12 years ago?

A. About twelve.

Q. And you saw him for about three years after that?

A. Yes.

Q. And it was always where?

A. In Mott street.

Q. Was it in this store, 34 Mott street?

A. Not particularly in this store.

Q. What did you see him doing in this store when you were there?

A. Saw him handling goods there same as any of the rest of them.

Q. What do you mean by "handling goods?"

A. Well, he might be selling; I never saw him buying anything because what we call the foreman he used to always buy from me when they wanted any rice; I had a great deal of trouble to get him to buy because I had some words with him.

17 Q. This man would then conduct his business the same as anybody else?

A. Same as anybody employed there or connected with it.

Q. Do you know who the members of the firm were?

A. I knew Kwong. Well, I knew the whole of them, but I don't know their names. I don't think in all the time I was amongst them that I know twenty Chinamen's names yet.

Q. Was this man doing the same business in the place as the other——

A. As other employees.

Q. Do you know whether he was an employer or an employee?

A. I could not state positively.

Q. You don't know what his interest in that business was, do you?

A. I don't, sir. He told me—not exactly me. I heard him telling others several times that he was a partner there, but we can't vouch for that, if they are in a company or not, there are so many companies there and they are all connected with the business.

Q. You have done business with a number of these Chinese companies, have you not?

A. I have.

Q. And in each of them there are always several partners, are there not?

A. So I understand.

Q. In your dealings with them that is the case?

18 A. Yes.

Q. This man's relations with the firm that you did business with at 34 Mott street was the same relation as you witnessed in other places?

A. Yes.

(Objected to, calls for a conclusion.

Objection sustained.)

No cross-examination.

Mr. McManus. I renew my motion for the discharge of the prisoner on the ground that the statute does not prescribe the form or amount of proof as to whether the man was a merchant and not a laborer.

Mr. Howell moves for judgment in this case.

Decision reserved.

19 United States
vs.
Ah How, alias Louie How.

Before B. Lincoln Benedict, esq., United States Commissioner.

Brooklyn, *December 18th, 1902.*

Present: Mr. Howell and Mr. McManus.

The Commissioner orders deportation of prisoner.

Mr. McManus takes exception to ruling and states he will appeal.

20 United States district court, eastern district of New York.

United States
vs.
Ah How, alias Louie Ah How.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for

the said district, by which it was adjudged that the said defendant Ah How, alias Louis Ah How, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York for the reason specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the
21 said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNCE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

22 United States district court, eastern district of New York.

UNITED STATES
vs.
AH HOW, ALIAS LOUIE AH HOW.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action. and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

23 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Ah How, alias Louis Ah How, should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

TERENCE J. McMANUS.

24 Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

25 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
AH HOW, ALIAS LOUIS AH HOW, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York appointed to be held
26 at the city of New York, borough of Brooklyn, on the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Ah How, alias Louie Ah How, is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order & stay. Filed and entered the 29th day of December, 1902.

27 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK ALIAS HOM DOCK, LEE KIT, and Tom Hong alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO ALIAS CHU GEE.

MARCH 18, 1903.

28 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

29 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
AH HOW.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Ah How, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day

30 of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me,

judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Ah How be removed to the country from whence he came, to wit, the Empire
31 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

32 United States district court, eastern district of New York.

UNITED STATES }
vs. }
AH HOW. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, United States commissioner, setting forth in substance that one Ah How on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Ah How, and he was arrested thereon on the 24th day of July, 1902,

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the Chi-
33 nese exclusion act went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Ah How was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China,

And it was thereupon ordered and adjudged by said commissioner that the said Ah How, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards and on the 23rd day of January, A. D. 1903, said

appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

34 Therefore, it is hereby ordered, adjudged, and decreed that the said Ah How be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

35 District court of the United States, eastern district of New York.

UNITED STATES
against
AH HOW ALIAS LOUIE AH HOW.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Att'y.

Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

36 United States Supreme Court.

AH HOW ALIAS LOUIE AH HOW, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Ah How alias Louie Ah How, the appellant herein, applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent

only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed): Appeal. Filed April 20, 1903.

37 United States Supreme Court.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for eastern district of New York, confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States and in not holding that the said complaint was not sufficient to confer jurisdiction.

38 Second. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Third. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Fourth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States), by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty

39 obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed April 20, 1903.

40 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Ah How, alias Louie Ah How, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE,
Clerk.
By PERCY G. B. GILKE,
Deputy Clerk.

41 UNITED STATES OF AMERICA, ss:

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Ah How, alias Louie Ah How, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

42 (Indorsement on cover:) File No. 18958. E. New York, D. C. U. S. Term No. 307. Ah How alias Louie Ah How, appellant, vs. The United States. Filed June 2, 1903. File No. 18958.

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8331—03——2

27132

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 308.

CHU DO, ALIAS CHU GEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18959)

27133

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 308.

CHU DO, ALIAS CHU GEE, APPELLANT,

vs.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8906—03——1

1 EASTERN DISTRICT OF NEW YORK:

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector duly appointed under the statutes of the United States; that one Chu Do, a Chinese and a laborer within the United States at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and willfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5th, 1892, as amended by the act of Congress of Nov. 3, 1893, and, having come unlawfully into the United States without certificate, was on the 29th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Chu Do, that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 29th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

2 The President of the United States of America. To the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Chu Do was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer and without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chu Do wherever he may be found and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.]

B. LINCOLN BENEDICT,
United States Commissioner,
For the Eastern District of New York.

3 U. S. commissioner's office, eastern district of New York.

The United States of America, vs. Chu Do, alias Chu Gee. Warrant to apprehend.

The within-named Chu Do arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

The within-named Chu Dow committed for examination. Dated July 24th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

U. S. district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
CHU DO, ALIAS CHU GEE. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector, regularly appointed and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Chu Do, alias Chu
4 Gee, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States and was found unlawfully within the United States without certificate of residence as required by law. Whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do, alias Chu Gee, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing;

And whereas, thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 25th day of November, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the respondent by his attorney claimed to have been born in the United States and to be lawfully entitled to be and remain therein;

Now, after a full hearing thereon, it is on this 25th day of November, 1902, found and adjudged that the said Chu Do, alias Chu Gee, is a Chinese laborer found without certificate of residence as required by law in the United States, was not born in the United States, and is not lawfully entitled to be or remain in the United States; and it is there-
5 upon ordered and adjudged by the said U. S. commissioner that the said Chu Do, alias Chu Gee, be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in said eastern district of New York, this 25th day of November, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES,
vs.
CHU DO, ALIAS CHU GEE.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before me, B. Lincoln Benedict, United States commissioner, setting forth in substance that one Chu Do

on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do and he was arrested thereon on the 24th day of July, 1902.

And afterwards and on the 12th day of August, A. D. 1902, and by continuance to and including the 25th day of November, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the United States and to be lawfully entitled to be or remain therein; and after a full hearing
7 thereon it was found and adjudged by said commissioner that the said Chu Do, alias Chu Gee, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

And it is thereupon ordered and adjudged by said commissioner that the said Chu Do, alias Chu Gee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 25th day of November, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 EASTERN DISTRICT OF NEW YORK:

I, B. L. Benedict, U. S. commissioner, do hereby certify that the foregoing writings are true copies of all original affidavit of complaint, warrant of arrest, judgment, and order of deportation in the case of The United States vs. Chu Do, alias Chu Gee, on file and remaining in my office, made up together with the annexed abstract and proceedings and copy of testimony as a transcript of proceedings in the said case to be transmitted to the district court of the United States for said district, on the appeal of said Chu Do from the judgment of the United States commissioner to the district judge of said district.

Witness my hand and official seal this 11th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

9 *Abstract of proceedings.*

U. S.
vs.
CHU DO.

1902.
July 24th. Defendant arrested and before commissioner.
" Defendant committed in default of bail.
Examination set for August 12th.
Aug. 12. Hearing had. E. W. Woods appears for deft. Hearing continued to Aug. 19th.
Aug. 19. Hearing further continued to Oct. 2nd.

1902.

Oct. 2. Hearing resumed. L. M. Howell, esq., asst. district atty., appears for the U. S. Black, Olcott, Gruber & Bonynge (Mr. T. J. McManus), appear for defendant; witnesses examined on behalf of the U. S. and case continued to 10th. Motion to discharge defendant made.

Oct. 10th. Hearing further continued to Oct. 17th.

Oct. 17th. Briefs on motion to discharge deft. submitted. Decision reserved and hearing continued to Oct. 20th.

Oct. 20th. Motion to discharge denied, and hearing further continued to produce witnesses for deft. from time to time till Nov. 18th.

Nov. 18th. Hearing resumed; defendant's attorney offers to show by an absent witness, who is now sick, that defendant was born in the United States; hearing continued to produce the absent
10 witness until Nov. 21st.

Nov. 21. Hearing resumed; testimony taken on behalf of defendant; testimony closed. Defendant's attorney moves for discharge on the proofs and on all the grounds heretofore urged on motion of Oct. 2. Mr. Howell for U. S. opposes and moves for an order of deportation. Hearing continued to Nov. 25th.

Nov. 25. Hearing resumed; same appearances. Mr. McManus argues in support of his motion and Mr. Howell in opposition thereto. Motion to discharge denied. Judgment given against the defendant. Order of deportation issued to the marshal. Notice of appeal given on behalf of the defendant.

(Endorsed:) Transcript of proceedings for deportation before U. S. commissioner. Made upon appeal to district judge. Filed December 3, 1902.

11 United States commissioner's court, eastern district of New York.

UNITED STATES OF AMERICA)
vs.
CHU DOW, ALIAS CHU GEE.)

Hearing had in the above-entitled case before Hon. B. L. Benedict, United States commissioner, at the court-house in Brooklyn, New York, on the 2nd day of October, 1902.

Appearances. Lloyd M. Howell, assistant United States attorney, appears for the United States. T. J. McManus appears for the defendant.

COUNSEL FOR THE DEFENDANT. I move to dismiss the complaint upon the ground that it does not charge a violation of the act of 1892 or the act of 1893 in relation to the exclusion of Chinese persons, it being our contention that, in order to bring the defendant within the act, the complaint or information should charge expressly that he was a Chinese laborer within the United States prior to the passage of the act of 1892, and that he did not procure a certificate of residence within six months after the passage of the act of 1893.

(Motion denied.)

J. H. JENKINS, Chinese inspector, sworn as witness for the United States, testified as follows:

12 Direct examination by Mr. HOWELL:

Q. Mr. Jenkins, are you a Chinese inspector in the employ of the United States Government?

A. Yes.

Q. As such official, is it a part of your business to investigate and examine into the right of Chinese persons to be in the United States?

A. Yes.

Q. In the course of your examinations, have you met the defendant, Chu Dow, alias Chu Gee?

A. Yes.

Q. Where did you first see him?

A. I found him in a laundry.

Q. Now start in and tell your story, just what happened. Do you recall the date?

I can tell by looking at my book.

Commissioner BENEDICT. Possibly you can refresh your recollection by looking at your warrant.

Yes, sir.

Q. (Mr. HOWELL.) Do you know when was the date of that warrant? Now look at your complaint. Was that day the first time you saw this man or was it the day previous?

A. Yes; it was the day previous.

Q. What is the date of the warrant?

A. 24th.

Q. That was the date previous to that, was it?

A. Yes.

Q. Then you went where and saw this man?

A. I found him in a laundry at 137½ Duffield street.

Q. Now what did you find Chu Dow doing?

A. To the best of my recollection he was at work ironing.

Q. Did you have any conversation with him?

A. I asked him for his papers.

Q. You had an interpreter with you?

A. Yes.

Q. Did you receive anything whatever from him?

A. No.

Q. What did you do then?

A. I took him along with me.

Q. Where did you bring him?

A. To the court-house, post-office.

Q. Before what officer, if any?

A. Mr. Benedict, United States commissioner.

Direct examination before Mr. MCMANUS:

Q. What words did you use?

A. I asked him for his papers.

Q. And you told the interpreter to say that to him?

A. Yes.

13 Q. You do not understand Chinese, do you?

A. No.

Q. Did you ever know this man before?
A. No.
Q. Did you ever see him in your life before your visit on this day?
A. Not that I know of.
Q. So you simply swore to the complaint in this case because of the fact that you had asked the interpreter to ask him whether he had a certificate or not?
A. He presented no certificate.
Q. What was he doing when you went in?
A. To the best of my recollection he was ironing.
Q. Are you positive on that point?
A. No; I am not positive, but that is to the best of my recollection.
Q. What kind of a place of business was this?
A. It was a laundry.
Q. You don't know whether he has ever been a merchant or not?
A. No, sir.
Q. Well, you simply went out on this particular proceeding, and went in this place as you went in other places?
A. Yes, sir.
Q. Looking around for Chinese who did not have certificates?
A. Yes, sir.
Q. And you asked your interpreter this question to put to this defendant, and then you made the arrest. You don't know of your own knowledge whether this interpreter put the question to the defendant or not, do you?
A. No, sir.
Q. If he had been outside you would not have arrested him, would you?
Mr. HOWELL. Question objected to.
Commissioner BENEDICT. Objection sustained.
Q. Did you go into other places that day?
Mr. HOWELL. Question objected to.
Commissioner BENEDICT. Objection overruled.
Q. Did you?
A. Certainly.
Q. How many others?
A. I could not state positively how many.
Q. Was it 10, 15, or 25?
A. 10, or probably 25.
Q. Were they all laundries?
A. Yes, sir.
Q. And in all of these places did you make arrests?
Mr. HOWELL. Question objected to.
14 Commissioner BENEDICT. Objection sustained.
Q. Nobody told you before you went in there that this man was in the United States before 1892, did they?
A. No, sir.
Q. Or in 1893 or 1894?
A. No, sir.
Q. And you don't know as a matter of fact whether he has been or not?
A. No, sir.

Q. And it was simply the matter of fact that he was in the laundry, and that after you asked your interpreter to ask the defendant if he had the papers, and he failed to produce them, that then you arrested him?
A. Certainly.
Q. Who was the interpreter whom you took with you?
A. Moy Gop Jung.
Q. This man in the room here?
A. Yes.

MOY GOP JUNG, sworn as interpreter:

Q. Are you a Christian?
A. Yes, sir.
Q. Do you believe in the Christian oath?
A. Yes, sir.
Q. What is your belief as to making a false statement under oath in a court?
A. If I make a false statement in court, I shall be punished.
Q. Both here and hereafter?
A. Yes, sir.
Q. Do you regard the oath you take here as binding as an oath which you would take as a Chinaman?
A. Yes, sir.
Q. (Mr. HOWELL.) Are you an interpreter in the employ of the United States Government, stationed with the Chinese inspectors here in Brooklyn?
A. Yes, sir.
Q. Do you remember on the 23rd day of July or thereabouts having gone with Inspector Jenkins to 137½ Duffield street, and having there seen the defendant, Chu Dow?
A. Yes, sir.
Q. Did you put to him any questions that day?
A. I went with the inspector and went into his place, and the inspector asked me to ask him for his certificate, and I asked him where his certificate is, and he said his certificate over Chinatown, and the inspector told me to tell him to get ready to go with him.
Q. Told you to tell him to get ready to go with him?
A. Yes, sir.
Q. What was the defendant doing when you went in this place?
A. He was ironing.
15 Q. What was the nature of this place—was it a store, laundry, or what?
It was a laundry.
Q. Did he produce any certificate there?
A. He did not.
Q. (Mr. MCMANUS.) How long have you been in the employ of the Government?
A. Since last August.
Q. August of this year or last year?
A. This year.
Q. Do you mean this summer, or a year ago?
A. I mean July, 1902.

Q. Were you employed before that by the Government?
A. No.
A. What was your last employment, before employment by the Government?
A. I lived in Washington.
Q. In what position?
A. Laundry.
Q. You had a laundry?
A. Yes, sir.
Q. How long were you in business there?
A. I was in business there 15 years.
Q. 15 years?
A. Yes, sir.
Q. In the laundry business?
A. Yes, sir.
Q. Who had you appointed as interpreter, Mr. Izard?
A. No, sir.
Q. Who?
A. I make application to the Treasury Department.
Q. And you were appointed?
A. Yes, sir.
Q. You have got your own certificate?
A. Yes, sir.
Q. And you were a laborer prior to being an interpreter?
A. Yes, sir.
Q. What day was this that you went into this laundry?
A. I don't remember exactly the day.
Q. How long had you been in the office at the time you went?
A. 2 or three days.
Q. It might have been on the 24th that you went there?
A. I don't remember.
Q. Might it have been on the 25th?
A. I don't remember. It might have been on the 26th.
Q. Now, do you know what part of China this man came from?
A. No, sir.
Q. How many Chinese dialects do you interpret?
A. I interpret 2 or 3 different dialects by sound.
16 Q. Are you familiar with these dialects as well?
A. Not all of them.
Q. What do you mean by sound and don't write them?
A. I know them by sound.
Q. And you don't write them?
A. No.
Q. Are you sure this man understood you when you spoke to him?
A. Yes, sir.
Q. How many places did you go in that day?
A. I don't remember; I just follow the inspector.
Q. There was more than one, was there?
A. Yes.
Q. Do you remember the particular facts in each case?
A. No.

Q. How is it you remember this case so particularly?

A. I simply go with the inspector, and what the inspector told me; I simply interpret what his business is.

Q. Do you remember the facts in every case?

A. No; but I remember going with the inspector.

Q. Did not ask him what his business was, did you?

A. No, sir.

Q. Do you know as a matter of fact whether he was here in 1892?

A. No, sir.

Q. Was he here in 1893?

A. I don't know.

Q. And don't know anything about him?

A. No, sir.

Q. Did you know whether Mr. Jenkins had a warrant for him at that time or not?

A. I don't know.

Q. Did Mr. Jenkins have any paper with him at that time?

A. I don't remember.

Mr. HOWELL. Now, Moy, when you left did you remember what you did in this place? Will you explain to me what you meant by what you did there, in connection with all the other places that you went to?

A. I went in with the inspector.

Mr. MCMANUS. When you first went in did you know whether or not this man could speak English?

A. By inspector's orders I always ask this question. He say he can't talk English.

Mr. HOWELL. Then I object to this conversation with Mr. Jenkins.

(Objection withdrawn.)

17 Then the inspector told me to ask him to show his certificate.

Q. That is what you told the Chinaman? Did he show it?

A. No, sir.

Q. Did he answer your question?

A. He said his certificate over Chinatown, New York—Mott street—and——

Q. And he did not produce any certificate?

Mr. HOWELL. Objection.

Commissioner BENEDICT. Objection overruled.

A. No, sir.

Mr. MCMANUS. I move for the discharge of the defendant upon the grounds that the Government has failed to make out a case. In the first place, I contend that the Government is bound to offer some proof that during the years 1892 and 1893 that this defendant was in the United States and was a Chinese laborer at that time, and that the burden does not shift until after something in the way of proof of those facts is established.

Commissioner BENEDICT. Motion denied.

And there is nothing here to show that during those years this man was a laborer or was within the United States.

Commissioner BENEDICT. Motion denied.

Now I ask for the discharge of the defendant on the further grounds that by the act of 1901 and 1902, and under the provisions of the treaty

between the United States and China of 1894, the statute of 1892 and 1893 was practically to all intents and purposes, in connection with the exclusion of Chinese persons in the United States at that time as laborers, was repealed. Now, the treaty of 1894 provides in article 4 that it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, except the right to become naturalized citizens. Now, we would not contend before your honor that this treaty simply standing by itself would be controlling in a proceeding of this character, but we contend under the provisions of the law of 1902 that the provisions of the treaty as to the rights of Chinese persons in the United States is expressly recognized. It is given statutory sanction, and I will quote from the act of 1892 on that point.

* * * * * * *

The first clause provides that the act of 1888 is reenacted, extended, and continued, so far as the same are not inconsistent with treaty obligations. Now, we contend that under that phrase that Chinese persons in the United States are entitled to the same rights and privileges
18 which citizens of any government or country are awarded and accorded here. Now, the citizens of no other country are brought under the jurisdiction within any such proceeding as this, and it is clear to our mind, and I would like to submit a formal memo. on this point, as being a violation of the Constitution of the United States. In the first place they are denied the protection of the laws, and in the second place they are deprived—

(At this point it seems you changed the above motions to read as follows, viz:)

First. I ask for the discharge of the defendant, as the Government has failed to make out a case, and that they have failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893, or prior thereto.

Second. Upon the ground that the statute of limitation has run against the proceedings.

Third. Upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by the act of 1902.

Fourth. Upon the ground that the proceeding is illegal, and that it violates the provisions of the United States Constitution in denying to the defendant its protection of the laws and that it is depriving him of his liberty without due process of law.

Fifth. And I beg leave to submit a brief upon those points.

Commissioner BENEDICT. I set Friday, the 10th of October, as date for next hearing.

19 UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal building, Brooklyn, New York, November 11, 1902.

Appearances: United States District Attorney Pettit, by Mr. Howell; Ralph Izard, esq., chinese inspector for the Government. Messrs. Black, Olcott, Gruber & Bonynge, for the prisoner.

Mr. HOWELL. I move the continuation in the case of Chu Do, the case in which the Government has presented its evidence.

Mr. MCMANUS. We had informed the father of Chu Do to be here this morning as a witness. He was in our office yesterday and made an affidavit, and we assumed that he would be here to-day and we are now informed he is sick. He is a pretty old man, and I ask that the matter be adjourned for a few days that we may produce him.

Mr. HOWELL. No objection.

Adjourned to Tuesday, November 18th, at 11 o'clock.

UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Before B. Lincoln Benedict, esq., United States Commissioner.

FEDERAL BUILDING,
Brooklyn, N. Y., November 18th, 1902.

Appearances: Same as before.

An adjournment is asked for by Mr. McManus on the ground that he is unable as yet to produce his witness.

Mr. HOWELL. I object to any further adjournment and ask for an order of deportation.

Mr. MCMANUS. I will offer our affidavit as showing our good faith and the good faith of the defendant in asking for this adjournment, and ask for a further adjournment, and I am willing to agree to any form of interrogatories or anything further that may be suggested to the end that this case be disposed of peremptorily.

(Objected to on behalf of the Government.)

Mr. MCMANUS. I ask the commissioner to grant us a delay of two days in the case of Chu Do for the reasons stated, and I will, if the commissioner desires it, submit the affidavit I have here.

Mr. HOWELL. I object to the admission of the affidavit as incompetent.

Mr. MCMANUS. I only offer it for the information of the commissioner, not as evidence in the case.

(The affidavit is presented to the commissioner.)

Mr. HOWELL. I renew my motion for an order of deportation in this case.

Mr. MCMANUS. I ask for two days adjournment for the reasons stated and I ask to submit as part of my motion for the adjournment the affidavit I have submitted to the commissioner.

Mr. HOWELL. I object to that.

The commissioner rules that the hearing in the case of Chu Do will be adjourned to Friday, November 21st, at 11 a. m., to proceed peremptorily on that date.

23 UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Before B. Lincoln Benedict, esq., United States Commissioner.

BROOKLYN, *November 21st, 1902.*

Appearances: United States District Attorney Pettit, by Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government. Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, Judge Brenner, associate counsel for the prisoner.

CHU KAI TUN, called as a witness on behalf of the defendant, being duly sworn, testifies (through an interpreter) as follows:

24 Direct examination by Mr. MCMANUS:

Q. What is your business?
A. Chinese grocery.
Q. And where is your place of business?
A. No. 4 Pell street.
Q. How long have you been in business there?
A. Five years.
Q. Are you related to the defendant, Chu Do, alias Chu Gee?
A. That's my nephew.
Q. And do you know where he was born?
A. In San Francisco.
Q. Where, if you know?
A. 947 Sacramento street, San Francisco.
Q. And do you know about when he was born there?
A. Second year of Quong Suey.
Q. What year is that?
A. 26 years ago.
Q. 26 years ago?
A. Yes.
Q. Were you living in San Francisco at that time?
A. Yes, sir.
Q. Did you see him there as an infant?
A. Yes, sir; I did.

Cross-examination by Mr. IZARD:

25 Q. How long have you been a member of this grocery firm at No. 4 Pell street?
A. About six years.
Q. What is the name of that firm?
A. Hom Lum Chun.
Q. Who are the other members of that firm besides yourself, if you know?
A. Six members.
Q. What are their names?
A. Chu Koung, Chew You, Chew Kuon, Jung Bow.
Q. What did you do before you became a member of that mercantile firm?
The WITNESS. One more member, Fong Wing.
Q. (Repeated).
A. In some business in San Francisco.

Q. What was the name of the firm that you were connected with in San Francisco?
A. Dock Teung.
Q. And where was that firm located?
A. 947 Sacramento street.
Q. And how long were you engaged in business there?
A. Seven years.
Q. Seven years—and what were you doing before you were in business at 947 Sacramento street?
A. The first time I came over I was in Dock Teung's business.
Q. What were you doing before you went into business with Dock Teung?
26 A. When I first came I go in that business.
Q. And how long were you in business at Dock Teung's?
A. Seven years.
Q. And after that you came to New York?
A. Yes, sir.
Q. So the only two places you have lived in the United States are San Francisco and New York; is that right?
A. Yes, sir.
Q. And you lived seven years in San Francisco?
A. Yes, sir.
Q. And five years in New York?
A. Yes, sir.

Redirect examination by Mr. McMANUS:

Q. What year was it you came to the United States first?
A. Eleven years after Hung Chee.
Q. When was that—what year of our year?
A. 30 years ago.
Q. And where did you go then?
A. I came to United States and I went back to China.
Q. When did you come to the United States—when did you return to the United States?
A. 18th year of Kwong Suey.
Q. About ten years ago. And did you see this boy before you had gone back to China?
A. Yes, sir.
27 Q. And did you see him, as you testified in your direct examination, in San Francisco at that time?
A. Yes, sir.
Q. Where were you in San Francisco prior to your going to China?
(Objected to, as it has not been testified that he was in San Francisco. Objection overruled.)
A. In a store; Dock Teung.
Q. What is the name of that store again?
A. Dock Teung.
Q. Is that the same firm you afterwards came back to?
A. I went to the country after my return from China.
The COMMISSIONER. Was that the firm, Dock Teung, that he was in before he went back to China, the same Teung that he came back to after he came from China?

Mr. McManus moves to strike out the answer.

Q. (Repeated.)

(Question withdrawn.)

Q. Is this firm, Dock Teung, with which you were associated before you went to China, the same firm that you became associated with after you returned from China?

A. After I came back from China I just stopped there, but I went to the country.

28 Q. But was it the same firm that you afterwards became associated with, after you returned from the country?

(Objected to as leading. Objection overruled.)

Q. Where did you go after you came back *from the country*?

(No answer.)

Q. What part of the country did you go to when you came back to the United States?

A. Oppelet, about 24 miles from San Francisco.

Q. But did you ever return to San Francisco?

A. No; I was in a farm.

Q. Did you come back to San Francisco?

A. Yes; I did.

Q. When?

A. 14th year of Kwong Suey.

Recross-examination by Mr. HOWELL:

Q. Where were you born?

A. China.

Q. How long ago?

A. 55 years ago.

Q. How old were you when you came to this country first?

A. 25 years old.

Q. You were 25 years old; you said you were 55.

A. Yes, sir.

Q. Where did you land in this country?

29 A. San Francisco.

Q. Where did you go when you came to San Francisco?

A. Dock Teung's.

Q. How long were you on that farm outside of San Francisco, at Oppelet?

A. Three years.

Q. Three years; now, was that—then did you go back to San Francisco after you were on that farm?

A. No.

Q. Well, after you left that farm, where did you go to work?

A. Go to the farm picking hops.

The COMMISSIONER. After the farm.

Q. (By Mr. IZARD.) After you left the farm, where did you go?

A. About a mile from the farm, picking hops.

Q. Well, how long were you in that place picking hops?

A. Two years.

Q. Where did you go after that?

A. I came out to place called Oppelet, 24 miles.

Mr. McMANUS objects to the interpreter, as he speaks a different dialect from the witness.

Mr. IZARD. There is no difficulty on the part of the interpreter.

Mr. McMANUS. The interpreter is mixed; but I merely offer it as a suggestion.

30 Q. I started with you on that farm just outside of San Francisco? You said that you worked there three years; didn't you say that?

A. Yes, sir.

Q. Then you went to a place about a mile from there and worked there two years on a hop farm; didn't you say that?

A. Yes, sir.

The COMMISSIONER. Where did he go then?

Q. Now, where did you go then?

A. Came back to 24 miles place.

Q. Went back to Oppelet; how long did you stay there that time?

A. So long ago I don't remember.

Q. Did you come from there to New York?

A. Yes, sir.

Q. (By Mr. McMANUS.) Was this the occasion of your first or your second trip to the United States that you have testified about?

A. The second time after I returned.

Q. Were you a member of this firm in San Francisco at this time?

(Objected to as leading. Question withdrawn.)

Q. (By Mr. IZARD.) How old is Chu Do, if you know?

A. 27 years old.

31 Q. So, when you testified while I was examining you that for seven years before you came to New York you were connected with this firm of Dock Teung at 947 Sacramento street, you were mistaken, were you?

A. No.

Q. You were not mistaken? Well, didn't you just testify that for seven years before you came to New York you were living out in the country near San Francisco? Didn't you just testify that for seven years before you came to New York you were working out in the country near San Francisco?

A. Yes, sir; stayed there long time before I came to New York.

Q. Didn't you testify that when you came back to San Francisco the second time you stayed a few days in San Francisco and then went immediately out to this place in the country?

A. Yes, sir.

Q. How long were you in China on your return to China after coming to this country the first time?

A. Been so long ago don't remember.

(Objected to as having been answered.)

The COMMISSIONER. He has given when he came back again.

Mr. IZARD. I should like the witness to show this court how he came back the 18th year of Kwong Suey, but went to China about 14th year of Kwong Suey.

32 Mr. McMANUS. The interpreter doesn't interpret correctly.

Q. Now, while you were connected with that firm at 947 Sacramento street, whenever that was, can you tell me the name of any Chinese firm next door to 947 Sacramento street?

A. Been so long ago don't remember.

Q. Can you tell me who was at 945 Sacramento street?

A. Don't remember.

Q. Can you tell me who was at 943 Sacramento street?

A. Li Fuch.

Q. At 943—and what business was that Li Fuch in?

A. Chinese grocery.

Q. And what was at 947 Sacramento street?

A. Dock Teung.

Q. And what was that?

A. Chinese grocery.

Q. And what kind of a building was this 947—how many stories high?

A. Three story high.

Q. And the first floor was occupied as a store—street floor?

A. Yes, sir.

Q. And what was the second floor used for?

A. Dwelling house.

Q. Who lived on that floor?

A. Don't remember.

33 Q. And what was the third floor used for?

A. Just rooms.

Q. Rooms for people to live in?

A. Yes, sir.

Q. Who lived on the third floor?

A. Don't remember.

Q. Don't remember anybody that lived on the third floor?

A. No.

Q. Don't remember anybody that lived on the second floor?

A. No.

Q. Your memory is not very clear about things that occurred in San Francisco thirty years ago, is it?

A. No.

Q. Do you remember anything of particular importance that happened in San Francisco during the first years that you lived at 947 Sacramento street?

A. Been so long I could not remember.

Mr. McManus. I ask for the discharge of the defendant on the ground that it has been established that he is a native-born citizen of the United States, and also I renew my motion on all the grounds set out

34 at the close of the Government's case. I submit that this is not a case which calls for the testimony of two white witnesses. I ask for the discharge of the defendant on the ground that it has not been established that this defendant is a Chinese laborer, born in China, within the United States in violation of the provisions of the acts of 1892 and 1893 and on all the other grounds set out at the close of the Government's case.

Mr. Howell. In opposition, your honor, I ask for an order of

deportation in the case of Chu Do, alias Chu Gee, upon the grounds that it has been shown that this man was found acting as a laborer in a laundry; that he was without certificate as required by law; that he was asked to produce the same; that the only testimony offered in his behalf is entirely insufficient, under the law, to entitle him to a discharge.

Testimony closed.

Adjourned for argument to Tuesday, November 25th, at 11 o'clock.

35 United States district court, eastern district of New York.

UNITED STATES
vs.
CHU DO, ALIAS CHU GEE.

The above-named defendant, feeling aggrieved by the order made and entered on the 25th day of November, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Chu Do, alias Chu Gee, was not born in the United States, and was a Chinese laborer without certificate of residence and without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that

36 a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 1st, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 3, 1902.

37 United States district court, eastern district of New York.

UNITED STATES
vs.
CHU DO, ALIAS CHU GEE.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein

is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

38 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Chu Do, alias Chu Gee, should be taken for a hearing.

VIII. For other errors appearing the record of said trial.

ABE GRUBER.

Subscribed and sworn to before me this 1st day of December, 1902.

39 ROBT. C. TEN EYCK,
Notary Public, N. Y. Co.

(Endorsed:) Assignment of error. Filed December 3, 1902.

40 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
CHU DO, ALIAS CHU GEE, DEFENDANT.

On this 2nd day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 3rd day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorneys, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to

41 be held at the city of New York, borough of Brooklyn, on the 12th day of December, 1902, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff, and Chu Do,

alias Chu Gee, is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order & stay. Filed, December 3, 1902.

42 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY.	
SAME *vs.* TOM DOCK, ALIAS HOM DOCK, Lee Kit, and Tom Hong, alias Hom Poe.	
SAME *vs.* AH HOW.	March 18, 1903.
SAME *vs.* YUNG LEE.	
SAME *vs.* YUNG BONG.	
SAME *vs.* CHU DO, ALIAS CHU GEE.	

43 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

44 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
CHU DO ALIAS CHU GEE.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Chu Do alias Chu Gee, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 25th day of November, 1902, entered a judgment herein, and
45 having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained;

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 25th day of November, 1902, be, and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Chu Do alias Chu Gee be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order filed and entered 28th day of March, 1903.

46 United States Supreme Court.

CHU DO ALIAS CHU GEE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Chu Do alias Chu Gee, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a super sedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

47 Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

48 United States Supreme Court.

CHU DO ALIAS CHU GEE, APPELLANT,
against
UNITED STATES.

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth and not subject to the provisions of the Chinese exclusion laws, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person.

49 Second. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant was held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of such commissioner and court his right to be and remain in the United States in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas such provision of law is not constitutional as applied to appellant, who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the

50 United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had

been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Articles IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Sixth. In not holding that appellant had established to the satisfaction of the commissioner and judge the fact that he was a citizen of the United States.

51 Seventh. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed April 20, 1903.

52 District court of the United States, eastern district of New York.

UNITED STATES
against
CHU DO, ALIAS CHU GEE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Attorney, Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

53 United States district court, eastern district of New York.

UNITED STATES,
vs.
CHU DO, ALIAS CHU GEE.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Chu Do, alias Chu Gee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do, alias Chu Gee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 25th day of November, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a native-born citizen of the United States, and after a full hearing thereon it was found and adjudged by said commissioner that the said Chu Do, alias Chu Gee, was not born in the United States, and was without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

54

And it was thereupon ordered and adjudged by said commissioner that the said Chu Do, alias Chu Gee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

55

Therefore, it is hereby ordered, adjudged, and decreed, that the said Chu Do, alias Chu Gee, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States, within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

56 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States, for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of the United States against Chu Do, alias Chu Gee, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk.*
By PERCY G. B. GILKE, *Deputy Clerk.*

57 UNITED STATES OF AMERICA, *ss:*
To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the

date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Chu Do, alias Chu Gee, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18959. E. New York D.C. U. S. Term No. 308. Chu Do, alias Chu Gee, appellant, vs. The United States. Filed June 2d, 1903. Office of Supreme Court of U. S. Received May 28, 1903.

O

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 309.

LEW GUEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 8, 1903.

(18960.)

27147

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 309.

LEW GUEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector duly appointed under the statutes of the United States; that one Lew Guey, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Lew Guey that he may be dealt with according to law.

J. H. JENKINS, *Chinese Inspector.*

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24th, 1902.

2 The President of the United States of America, to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them:

Whereas complaint on oath has been made to me, charging that Lew Guey was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the Borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the Statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Lew Guey wherever he may be found, and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence, according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L.S.] B. LINCOLN BENEDICT,
United States Commissioner,
For the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America vs. Lew Guey.

Warrant to apprehend. Bail in $500 taken July 25, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within named Lew Guey arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
LEW GUEY. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Lew Guey on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Lew Guey, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Lew Guey, by his counsel, claimed to have been born in the United States and to be lawfully entitled to be and remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Lew Guey is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to be or remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Lew Guey be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States

commissioner, setting forth in substance that one Lew Guey on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Lew Guey, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the
7 United States and to be lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Lew Guey was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lew Guey, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 *Certificate of United States Commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of the United States vs. Lew Guey, a Chinese person, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal at Brooklyn, in said district, this 23rd day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed December 29, 1902.

9 UNITED STATES OF AMERICA,
District of Vermont:

Before me, Felix W. McGettrick, a commissioner of the circuit court of the United States, within and for said district, complaint was presented by John H. Senter, United States attorney, within and for said district, charging in substance that on or about the 26th day of June, 1897, at Richford in said district, Lew Guey, in violation of section of the Revised Statutes of the United States, did unlawfully come and was in the United States.

And on the 26th day of June, 1897, defendant was brought before me, the said commissioner, at my office in St. Albans, in said district, and upon full hearing on said charge, the said district attorney being present, it was adjudged by me that said Lew Guey had the lawful right to be and remain in the United States, by reason of being a citizen thereof, and he was accordingly discharged.

Given under my hand and seal at St. Albans, in the district of Vermont, this 26th day of June, 1897.

[L. S.] FELIX W. McGETTRICK,
United States Commissioner for District of Vermont.

(Endorsed:) Certificate of U. S. commissioner.

10 UNITED STATES }
agst.
LEW GUEY. }

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, November 11th, 1902.

Appearances: George H. Pettit, esq., United States district att'y. By Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government. Messrs. Black, Olcott, Gruber, and Bonynge for the prisoner.

It is conceded that the defendant, Lew Guey, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 192 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner
11 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant produced a certificate purported to be signed by one Felix W. McGettrick, but despite the production of this certificate the defendant was taken into custody by the Chinese inspector.

Mr. McMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant
12 of his liberty and property without due process of law; fifth, upon the ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

LEW GUEY, called on his own behalf, testifies as follows, through an interpreter who has also been sworn in this case:

Examination by Mr. McMANUS:

Q. What is your name?

A. Lew Guey.

Q. Where do you live?

A. 192 Myrtle avenue.

Q. Are you the person to whom this certificate was issued on the 26th of June, 1897, by Felix W. McGettrick, United States commissioner for the district of Vermont (showing witness paper)?

(Objected to. Objection overruled.)

A. Yes.

Q. Where were you born?

A. San Francisco.

13 Q. When?

A. I don't remember the year.

Q. How old are you?

A. About 20.

Q. What year did you go to China in?

A. I returned to China when I was quite young; I don't remember what year.

Q. Were you in Vermont?

A. Yes.

Q. When were you in Vermont?

A. I lived in Richford in 1897.

Mr. McMANUS. I offer the certificate in evidence.

Mr. HOWELL. We object to this certificate on the ground that it is not properly proved and identified; that it contains upon its face no photograph of this defendant; there is nothing whatever to show that this certificate belongs to this defendant.

Mr. IZARD. And in addition to those objections the Government has made its objections hereto on the ground it is either a certificate or judgment; if it is a certificate, the commissioner has no power to issue any such paper and therefore it is not competent and should not be admitted; if it is a judgment, it is not properly proven for the simple reason that it is neither a certified copy of a judgment nor an exemplified

14 copy, nor is it a complete record of the judgment; the whole judgment roll should be submitted if there is anything here in the shape of a judgment.

Mr. HOWELL. We object to it as incompetent, irrelevant, and immaterial, and upon all the further grounds stated here by Mr. Izard.

(Objection sustained.)

Q. You are the man mentioned in this certificate?

(Objected to, as the certificate is not in evidence.)

Q. (Continued.) This judgment?

Mr. HOWELL. Nor the judgment either.

Q. Were you arraigned before United States Commissioner McGettrick, at Richford, Vermont?

(Objected to as to the form of the question and as calling for a conclusion as well.)

Q. When were you in Richford, Vermont?

A. In June of 1897.

Q. Were you arraigned before a United States commissioner there?

A. Yes; my father was present to identify me.

Q. Did you have a hearing there before the commissioner?

15 (Objected to as calling for a conclusion. Objection overruled.)

A. Yes.

Q. And was that paper delivered to you after the hearing?

A. It was handed to my father, who handed it to me in turn.

Mr. McManus. I offer it for identification.

(Marked "Exhibit No. 1 for ident." of this date.)

Q. Where have you been since?

A. Been in New York.

Q. Where has this paper been since?

A. It was in Myrtle avenue, in Brooklyn.

Q. You have had it in your possession all the time?

A. Yes.

Cross-examination by Mr. Howell:

Q. How old are you now?

A. 20.

Q. Where were you born?

A. San Francisco.

Q. (By Mr. Izard.) Who told you you were born in San Francisco? (Objected to.)

A. My father told me I was born there.

Q. What is your father's name?

A. Lew Wing.

16 Q. Where is he now?

A. Dead.

Q. How long has he been dead?

A. A little over two years.

Q. How old were you when you went back into China from San Francisco?

A. I was quite young at the time; I don't remember.

Q. What village in China did you live in while you were there?

A. Taiark, Upshan district.

Q. How many years did you live in that village?

A. I lived there until I was fifteen years of age, when I returned to the United States.

Q. Did you go to school in the village?

A. Yes.

Q. Was your father living there during the whole time you lived in China?

A. My father was in the United States.

Q. Where did he die, in this country or in China?

A. He returned to China and died there.

Q. Did he return to China before you left or after?

(Objected to as already testified. Objection overruled.)

A. He was in the United States when I arrived here and returned a short time after that.

17 Q. What year was it, Kwong Suey, that you left China to go to the United States the last time?

A. 22nd year.

Q. You are certain about that?
A. Yes.
Q. And what year, Kwong Suey, is this?
A. The 28th.
Q. What time of year did you leave China to come to the United States the last time?
A. About the fourth month.
Q. Where did you land when you came to the United States at that time?
A. Vancouver.
Q. From Vancouver where did you go?
A. I went to Montreal.
Q. How long did you remain in Montreal?
A. About a week.
Q. From there where did you go?
A. I went to Richford with some white people.
Q. Any other Chinese with you?
A. I was alone.
Q. What became of you when you got to Richford?
A. I went to the jail.
Q. At Richford?
A. Yes.
Q. And then were you tried there?
A. Yes.
Q. Then when you were tried at Richford were you discharged and allowed to come on to New York?
A. Yes.
18 Q. You are positive about that?
A. No mistake.
Q. You were not in any other Vermont cities except Richford?
A. No.
Q. Perfectly sure?
A. No mistake.
Mr. GRUBER. Except as he might be passing through.
Q. Before what judge were you tried, if you know?
A. I don't know.
Q. Do you remember what kind of a looking man he was?
(Objected to.)
A. Stoutish face and reddish in color.
Q. Who was your attorney?
A. I don't know what his name was.
Q. Who appeared as a witness for you before the judge?
A. My father.
Q. What is his name?
A. Lew Wing.
Q. Where was he living at that time?
A. He lived in New York City.
Q. Did you testify yourself before the commissioner?
A. No; my father was the only one who testified.
Q. You don't remember anything about San Francisco?
A. No; I don't remember, I lived there.

Q. Do you know, as a matter of fact, whether you were there or not?

A. I was there when I was young, but I haven't been there since.

Q. How do you know you were there when you were young if you have no recollection?

A. My father told me.

Q. Then the only knowledge you have of ever being in the United States before the time that you claim to have been before Mr. McGettrick is what somebody told you?

A. I don't recall my staying in San Francisco, but I remember Richford.

Q. (Repeated.)

A. I didn't have any.

Q. (By Mr. McMANUS.) How old were you when you went back to China?

(Objected to as already testified. Objection sustained.)

Q. Do you remember crossing the water at that time?

(Objected to as leading.)

A. I was young; I don't remember it.

Mr. McMANUS. We now offer the judgment in evidence.

Mr. HOWELL. Objected to on the grounds already stated, as improperly proven and not sufficiently proven in any sense.

(Objection sustained and the paper excluded. Exception.)

Mr. McMANUS. I beg to ask for an adjournment for the purpose of offering further proof to support this paper we have offered in evidence.

Adjourned to Tuesday, November 18th, at 11 a. m.

UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *November 18th, 1902.*

Appearances: Same as before.

Mr. McMANUS. In this case, if the court please, I asked for an adjournment on last Tuesday in order to procure a certified copy of the judgment roll from the United States commissioner at St. Albans, Vermont. Tuesday evening we wrote to St. Albans, Vermont, and also to Richford, Vermont. A copy of the letter was sent to each place stating the facts and requesting that a certified copy of the judgment roll be sent to us. Up to the time I left my office this morning no answer had been received. We propose to send a registered letter addressed to Mr. McGettrick, and I ask for an adjournment for a week for the purpose of enabling us to make further efforts to get this judgment roll.

Mr. IZARD. We would like to have the same stipulation about the case being closed at that hearing, and if any other evidence is offered it must be offered on that day.

No objection by Mr. McManus.

Adjourned peremptorily to Monday, December 1st, at 11.

Adjourned from December 1st, 1902, to December 5th, at 11 o'clock.

23 UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 5th, 1902.*

Appearances: Same as before.

Mr. MCMANUS. I offer in evidence a letter that we have received from Commissioner McGettrick in answer to a letter we, as counsel for Lew Guey, wrote to McGettrick. The letter is signed by Mr. McGettrick, and I offer it as explaining this certificate and the purpose for which it was given.

Mr. HOWELL. I object to the admission of that letter in evidence upon the grounds that it is entirely irrelevant, immaterial, and incompetent, and as in no sense proving the judgment alleged to have been rendered by Mr. McGettrick in this case of Lew Guey.

Mr. MCMANUS. I submit that the letter is competent as tend-
24 ing to explain the purpose for which this certificate is given and showing that it was given, if the certificate is authentic, after a hearing had before the commissioner wherein it was determined by him that this man was a citizen of the United States, and showing further that this proceeding under which he is now held has already been adjudicated and that it is putting this defendant twice in jeopardy, and I renew my offer of the certificate in evidence.

Mr. HOWELL. I object to it upon the same grounds as heretofore stated.

The COMMISSIONER. No question arises as to the genuineness of the certificate, as it is the commissioner's signature?

Mr. MCMANUS. As to that point, I am willing to go upon the stand and testify that I have written to and received a letter from Mr. McGettrick, and I will testify that the signature on that certificate is in his handwriting.

Mr. IZARD. I do not think the counsel is qualified. Your honor has already ruled upon the admission of that certificate.

25 Mr. MCMANUS. I am offering it upon other grounds.

Mr. HOWELL. We object to the admission of the certificate upon all the grounds heretofore stated, the alleged certificate; we also object now to the admission of this letter alleged to be from Commissioner McGettrick in connection with the certificate already offered. If they are excluded under those objections then the authenticity of the signature of McGettrick becomes entirely immaterial in the case.

The COMMISSIONER. The certificate is not objected to because the genuineness of the signature is questioned?

Mr. HOWELL. There is no objection to the genuineness of the signature.

Mr. IZARD. As yet?

Mr. HOWELL. As one of the elements of our objection to that alleged certificate and that letter we do not take into account the question of the genuineness of the alleged signature of McGettrick; that is not one of the elements of our present objection.

26 The COMMISSIONER. I do not see that that calls for any testimony from you, Mr. McManus.

Mr. McMANUS. Then I renew my offer of the certificate and the letter.

(Objected to upon the grounds already stated.)

Mr. HOWELL. This letter does not alter the situation in any degree whatever, because from its very nature intrinsically, it is entirely irrelevant, immaterial, and incompetent.

The COMMISSIONER. I will admit the certificate to prove the fact of a hearing before Mr. McGettrick. It is competent for that purpose.

Mr. IZARD. A hearing on that date?

The COMMISSIONER. Yes.

Mr. McMANUS. I offer the letter from Mr. McGettrick as evidence received by me explaining the certificate.

The COMMISSIONER. What it explains is that he can not give you anything else.

Mr. McMANUS. It explains that he issues such certificates only in cases tried before him. I offer it for the purpose of showing that there was a hearing on that day.

27 (Objected to upon the ground that the certificate is in no way shown to be connected with the defendant here and as such it is entirely immaterial. Certificate admitted as showing a hearing before Commissioner McGettrick on the date named in the case of a man by the name of Lew Guey.)

Mr. McMANUS. I further offer this certificate as a record of a judgment of the United States court by a United States commissioner finding that Lew Guey is a citizen of the United States.

(Objected to. Objection sustained. Exception.)

The hearing on this case is suspended temporarily.

Hearing resumed:

Mr. McMANUS. I move for the discharge of the defendant in the case of Lew Guey upon all the grounds set out in the case of Chu Gee and on the further ground that the Government has failed to sus-

28 tain its contention and on the further ground that it has been established that the defendant is a citizen of the United States and that that contention and that proof has not been controverted by the Government in any way.

(Motion denied. Exception.)

Mr. HOWELL. The Government moves to deport the defendant.

Decision reserved.

Adjourned to December 12th to submit briefs.

29 UNITED STATES
vs.
LEW GUEY.

BROOKLYN, *December 15th, 1902.*

Before B. Lincoln Benedict, esq., United States commissioner.

Present Mr. Howell and Mr. McManus.

Mr. McManus contends that the certificate which was received as evidence of a hearing before United States commissioner and the testimony that this man received the certificate after the hearing, coupled with the fact that he is found now in the United States engaged here in business, sufficiently meets the burden of proof that the law forces on Chinese per-

sons, against that there is nothing but his arrest and the Government has offered no evidence, and therefore moves for his discharge.

Decision reserved.

30 UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

The commissioner orders deportation of the defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

31 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

The above-named defendant, feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant Lew Guey, was not born in the United States, and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, pro-
32 ceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 29th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway, New York City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1903.

33 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief, alleges that the said order made by the commissioner

herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested
34 by a Chinese inspector without any warrant for his arrest having been issued.

III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Lew Guey should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

ABE GRUBER.

(Endorsed:) Assignment of error. Filed December 29, 1902.
Certificate filed in N. Y. Co.
Subscribed and sworn to before me this 29th day of December, 1902.

H. M. SPENCE,
Notary Public, Kings Co.

35 United States district court, eastern district of New York.

UNITED STATES }
vs.
LEW GUEY. }

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, borough of Brook-
36 lyn, the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern dis-

trict of New York, wherein the United States of America is plaintiff and Lew Guey is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order allowing appeal. Filed and entered the 29th day of December, 1902.

37 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

38 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

39 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
LEW GUEY.

The defendant above named having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese-exclusion acts, and the case against the said defendant, Lew Guey, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the
40 18th day of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States district attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained;

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be, and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Lew
41 Guey be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

42 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Lew Guey, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lew Guey, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing

in said cause was had before said commissioner, at which hearing
43 the respondent claimed that he was a native-born citizen of the United States, and after a full hearing thereon, it was found and adjudged by said commissioner that the said Lew Guey was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lew Guey, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

44 Therefore it is hereby ordered, adjudged, and decreed that the said Lew Guey be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the Borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

45 District court of the United States, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty.

Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

46 United States Supreme Court.

LEW GUEY, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Lew Guey, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

47 United States Supreme Court.

LEW GUEY, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth and not subject to the provisions of the Chinese exclusion laws, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person.

48 Second. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant was held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of

such commissioner and court his right to be and remain in the United States, in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas such provision of law is not constitutional as applied to appellant, who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the appellant had theretofore been tried before a United States commissioner and
49 his right to be and remain in the United States established to the satisfaction of said United States commissioner.

Fifth. In not holding that a certificate and judgment of a United States commissioner, duly signed and certified by such United States commissioner, was evidence of the fact that the appellant had established to the satisfaction of the said United States commissioner his right to be and remain in the United States.

Sixth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the United States and China, promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Seventh. In not holding that the said commissioner and said
50 court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Eighth. In not holding that appellant had established to the satisfaction of the said commissioner and court his right to be and remain in the United States.

Ninth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Indorsed:) Assignments of error. Filed April 20, 1903.

51 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Lew Guey, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKES,
Deputy Clerk.

52 UNITED STATES OF AMERICA, ss.

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Lew Guey is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18960, E. New York D. C. U. S. Term No. 309. Lew Guey, appellant, vs. The United States. Filed June 2, 1903. Received office Supreme Court of U. S. May 28, 1903.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 310.

TOM HONG, ALIAS HOM POE, APPELLANT,

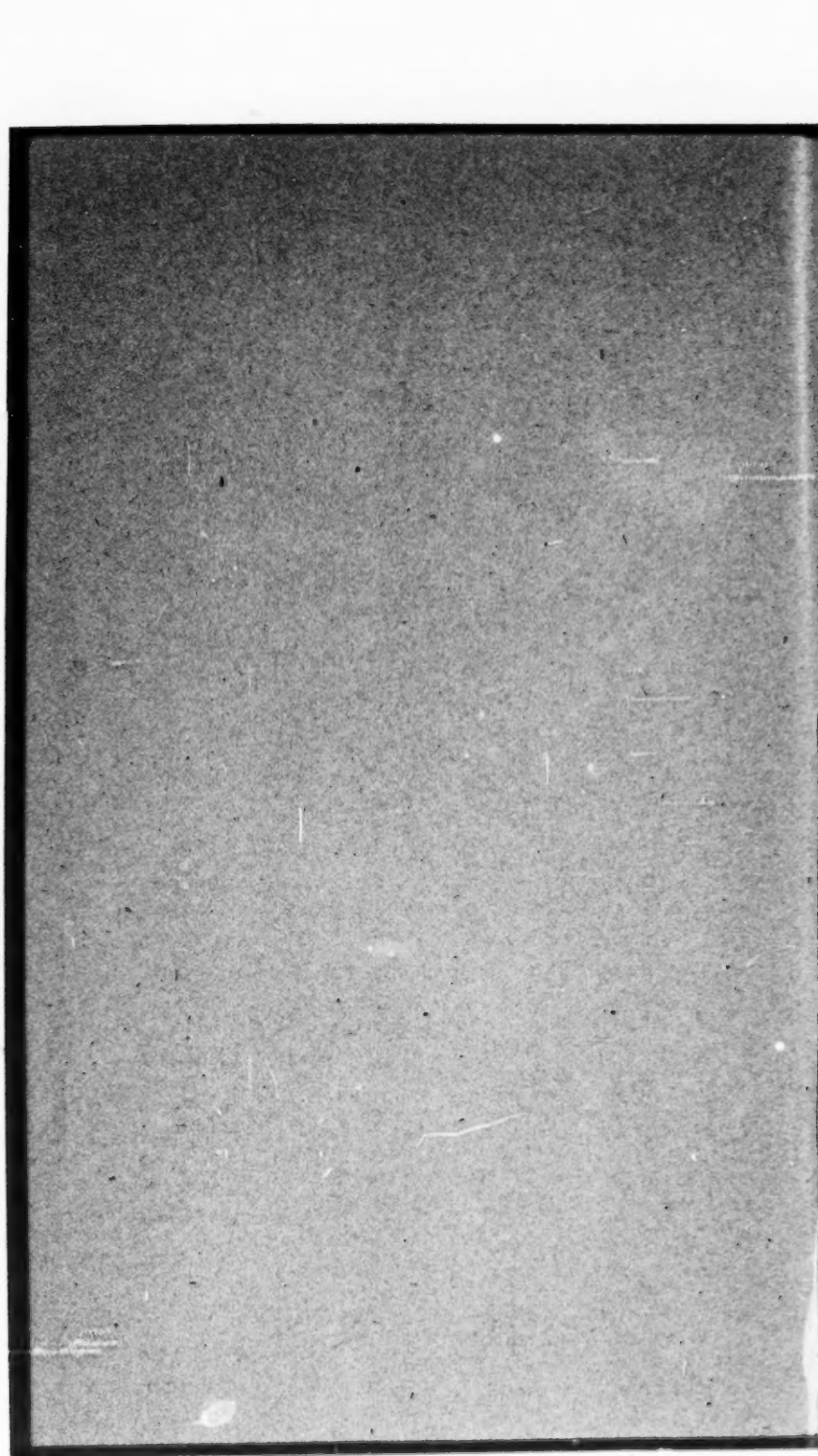
vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18961.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 310.

TOM HONG, ALIAS HOM POE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector, duly appointed under the statutes of the United States; that one Tom Hong, a Chinese and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence, required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was, on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Tom Hong that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 27, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me charging that Tom Hong was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Tom Hong wherever he may be found and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner
for the Eastern District of New York.

[Endorsed on cover.]

U. S. commissioner's office, eastern district of New York.

The United States of America vs. Tom Hong.
Warrant to apprehend. Bail in $500 given July 26, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Tom Hong arrested and before the commissioner, dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 26, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
TOM HONG, ALIAS HOM PONG. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector, regularly appointed, and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Tom Hong, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Tom Hong, and he was thereupon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

Whereas thereafter and on the 12th day of August, 1902,
5 and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Tom Hong, alias Hom Pong, by his counsel, claimed to have been a merchant doing business in the United States in 1893 and 1894, and therefore lawfully entitled to be and remain in the United States without obtaining a certificate of residence as required by law for a Chicese laborer.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Tom Hong, alias Hom Pong, is a Chinese laborer found without certificate of residence as required by law within the United States, was not a merchant doing business within the meaning of the statutes in 1893 and 1894 in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Tom Hong, alias Hom Pong, be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the
6 eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM HONG, ALIAS HOM PONG.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Tom Hong, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Hong, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been a merchant doing business in the United States on the 3rd day of November, 1893, and
8 lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Hong, alias Hom Pong, was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Hong, alias Hom Pong, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner,
Eastern District of New York.

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States *vs.* Tom Hong, alias Hom Pong, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. On appeal. Filed December 29, 1902.

10 UNITED STATES
vs.
TOM HONG, ALIAS HOM POE.

Hearing before United States Commissioner B. Lincoln Benedict, es q. at the Federal Building, Brooklyn, New York, December 5th, 1902.

Appearances: George H. Pettit, esq., United States district att'y, by Mr. Howell, Ralph Izard, esq., Chinese inspector for the Government., Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant, Tom Hong, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 510 Myrtle avenue, Brooklyn, by a Chinese inspector, who found him there working as a laundryman; it is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner Benedict, after
11 having been in the custody of the United States Chinese inspector until the warrant was issued. It is admitted that defendant failed to produce a certificate authorized by the Government upon demand.

Mr. MCMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do—first, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese-exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893 in so far as a proceeding of this character is concerned are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the ground that the evidence, if any, is barred by the
12 statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

(Motion denied.)

Mr. Howell states that the Government's case is in, as per stipulation.

TOM HONG, called as a witness on his own behalf, being duly sworn, testifies, through an interpreter, as follows:

Direct examination by Mr. MCMANUS:

Q. Where do you live?
A. New York.
Q. Where?
A. 17 Dover street.
Q. What are you doing there now?
A. I just room there.
Q. Boarding there?
A. I get a room there and I just go there.
Q. Are you in any business now?
A. No; just working some place.
Q. Where are you working?

A. 510 Myrtle avenue.
Q. You were arrested at the same time this last defendant (Tom Dock) was arrested, and at the same place?
A. Yes.
Q. How old are you?
A. 44 years old.
Q. How long have you been in the United States?
A. About twenty years.
Q. How long have you been in New York?
13 A. Over ten years.
Q. When did you first come to New York?
A. First I came to New York in 10th year of Kuong Suey.
The COMMISSIONER. 1885?
Mr. IZARD. About 1884.
The COMMISSIONER. Between 1884 and 1885?
Q. About 1885?
A. About 18 years ago.
Q. What business were you in, what did you do after you came to New York first?
A. I work, job work and work in a laundry some time.
Q. Where?
A. I worked all along; I change place; I don't remember.
Q. Tell us some place you worked.
A. I remember I did work in Brooklyn a few days.
Q. Did you ever go into business for yourself?
A. Yes; in New York.
Q. When?
A. I went in business in 1891.
Q. And where?
A. Doyer street.
Q. What number Doyer street?
A. 15 Doyer street.
Q. Were you or were you not a member of a firm there?
A. Yes; I member of the firm.
Q. What was the name of the firm?
A. Kwong Yen Ti.
14 Q. Was it the same firm that the last defendant was a member of—Tom Dock?
A. Yes; it was the same firm.
Q. What business were they engaged in?
A. Chinese grocery.
Q. What part of the business did you have charge of?
A. I work all kinds of work in the store and selling goods.
Q. And selling goods; did you buy the goods?
A. No; I don't buy the goods.
Q. Who bought the goods that you used in your business?
A. Kwong Lum is manager of the store; he always bought the goods.
Q. How long were you in business there?
A. Been in the business there five years.
Q. And what did you do after that?
A. After the store closed I go to work in a laundry.

Q. Where?

A. I live in New York and looking for work; anybody ask me to work for them I work for them.

Q. Where did you work after that?

A. Worked in New York on the street where the Jews was.

Q. Where the Jews were—do you know the number; was it down town?

A. 75.

Q. No. 75 where?

15 A. I only worked there a few days; don't remember the street.

Q. Where did you work for any long time?

A. Longer when I worked at 510 Myrtle avenue.

Q. How many years have you been there?

A. Little over a year.

Q. Where were you before that?

A. I can't tell; I go work afterward, but if I don't have any work I stop in New York.

Q. Where did you stop in New York when you weren't working?

A. 17 Doyer street.

Q. 17 Doyer street; and has that been your residence all the time you were out of employment?

A. Yes, sir.

Q. How many years all told has 17 Doyer street been your residence altogether?

A. I did live there about two or three years.

Cross-examination by Mr. IZARD:

Q. Do you generally calculate your dates by the Chinese calendar or the American calendar?

A. Some time I write on the Chinese calendar and some time on the American.

Q. Which are you most accurate in?

(Objected to; calls for a conclusion.)

The COMMISSIONER. It calls for his own knowledge.

16 Q. Which?

A. Why, I can't say; I use Chinese calendars some time and American.

Q. What year of Kuong Suey did you first land in New York?

A. 10th year of Kuong Suey.

The COMMISSIONER. In New York?

Q. Yes; he landed in New York. Have you been in New York ever since?

A. Yes.

Q. Then you have been in New York longer than 10 years, haven't you?

A. Over 10 years.

Q. And when you first came to New York did you go immediately into business at No. 15 Doyer street?

The COMMISSIONER. He said he didn't.

(Objected to as already answered. Objection overruled. Exception.)

A. No immediately.

Q. About how long was it after you arrived in New York before you joined this firm at 15 Doyer street?

A. I said it was a little over a year that I joined the business.

Q. Stopped where about a year before you went into business?

A. I stopped all along with my friend in some laundry.

Q. What laundry?

17 A. I stopped in New York. It has so long time ago, don't remember.

Q. Don't remember the name of the laundry; what is the name of the friend you stopped with?

A. Quan.

Q. You don't remember anything about his family name; is that right?

A. Yes.

Q. And you don't remember where this laundry was that you stopped with him at?

A. I forget it.

Q. And how long did you stay with this firm after you first arrived in New York?

A. About a year.

Q. Then what did you do?

A. I worked in the other place.

Q. What place?

A. New York.

Q. How long did you work in that place after you left this friend you stayed a year with; how long did you work in some other place?

A. About a few months.

Q. Where was that place that you worked?

A. I don't remember.

Q. Do you remember the name of the friend that you worked with there?

A. Hom.

Q. This was a Hom; you don't remember his other name, either?

A. Don't remember.

Q. Just tell me now how long did you stay with him?

18 The COMMISSIONER. Two months.

Q. How long did you work with him?

A. Not very long; about two or three months.

Q. Then where did you go and what did you do?

A. Then I go stop in the laundry with my cousin.

Q. How long did you stop in that laundry with your cousin after leaving your friend Hom?

A. About two months.

Q. Well, after that two months, what did you do?

A. Anybody told me work for them, I work for them.

Q. Well, did you work anywhere?

A. Worked for the Fong Company.

Q. And how long did you work for the Fong Company?

A. About two months.

Q. Two months for the Fong Company; well, go ahead now; what did you next do?

A. I go to business; merchants.

Q. Where did you then go into business as a merchant?

A. 15 Doyer street.

Q. At 15 Doyer street; and what was the name of the firm that you joined?

A. Kwong Yen Hi.

Q. How long had you been in New York, according to the figures you just made here, when you went into business at 15 Doyer
19 street; about how long, approximately; how long after your first arrival in New York was it that you went into business at 15 Doyer street?

A. About few years.

Q. How many—you have just told where you lived all that time—was it one year or two years?

A. I lived in New York seven or eight years before I go to business.

Q. Seven or eight years before you went into business; why did you tell me a minute ago that when you left this Fong Company you went into business?

A. I go to work and go to business.

Q. Went to work and went to business; what do you mean by that?

A. First I go to work, after work then I go to the business.

Q. What does that mean?

A. First I working, and I through my working, all I done, so I go to business.

Q. Didn't you testify that you worked one year with this friend of yours when you first came to New York a minute ago?

A. No; I didn't testify.

Q. You didn't say that you lived one year with this friend of yours when you first came? Didn't you testify that you worked three years in a laundry with a company named Quan?

A. I didn't say it.

20 Q. Didn't you say, then, after leaving the Quan Company that you worked about two months with the company named Hom?

A. Yes; I did say it.

Q. Then, did you say that you worked with the Fong Company?

A. Yes.

Q. Then, didn't you say that when you left this Fong Company you went into business at 15 Doyer street with this mercantile concern?

A. Yes; I said it.

Q. Is that true?

A. Yes.

Q. The 10th year of Kuong Suey is how many years ago from this date?

A. 18 year.

Redirect examination by Mr. McMANUS:

Q. Was it 18 years ago that you came to New York?

A. Yes; about 18 years.

Q. How many years were you in San Francisco before that?

A. Two years.

Q. (By the COMMISSIONER.) What year of Kuong Suey did you go into the firm of Kwong Yen Ti?

A. 20th year of Kuong Suey.

Mr. IZARD. 20th year of Kuong Suey?

Q. (By Mr. MCMANUS.) What year was that—how many years ago from now?

A. 8 year.

21 FRANCIS J. O'BRIEN, called as a witness on behalf of the defendant, duly sworn.

It is stipulated that this witness will testify in this case, as in the case of Tom Dock, that he knew defendant from 1891 to 1895, etc., etc.

Adjourned to Monday, December 8th, at 11 o'clock.

22 UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 8th, 1902.*

Appearances same as before.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, duly sworn.

It is conceded that if the witness, Nathaniel J. Feldman, was called as a witness in this case he would testify to the same state of facts as in the case of Tom Dock.

TOM HONG, recalled.

Redirect examination resumed by Mr. MCMANUS:

Q. Were you arrested at the same time and at the same place that Tom Dock was arrested?

A. Yes, Tom Dock.

23 Mr. McManus moves for the discharge of the defendant upon all the grounds stated in the Chu Do and Lew Guey cases, as well as on the evidence.

Counsel for the Government moves to deport.

Decison reserved.

24 UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. McManus and Mr. Howell.

Mr. McManus presents argument.

Mr. Howell presents argument in opposition.

Mr. McManus moves for discharge of defendant.

Mr. Howell moves to deport.

Decision reserved.

25 UNITED STATES
vs.
TOM HONG, ALIAS HOM POE.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances: Same as before.

The commissioner hands counsel written opinion in this case and orders deportation of defendant.

Mr. McManus takes exception to ruling and states he will appeal.

26 United States district court, eastern district of New York.

UNITED STATES,
vs.
TOM HONG.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Tom Hong, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed and that a
27 transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge. Dated New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant,
170 Broadway, Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal filed December 29, 1902.

28 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM HONG.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon

information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant, for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

29 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Tom Hong should be taken for a hearing.

VIII. For other errors appearing the record of said trial.

TERENCE J. MCMANUS.

Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.
Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

30 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
TOM HONG, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at

the city of New York, borough of Brooklyn, on the 15th day
31 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Tom Hong is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered the 29th day of December, 1902.

32 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, LEE KIT, and Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

33 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

34 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United

States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES)
vs.
TON HONG, ALIAS HOM POE.)

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Ton Hong, alias Hom Poe, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant and the said
35 defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained.

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Ton Hong, alias Hom Poe, be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903

36 United States district court, eastern district of New York.

UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Tom Hong, alias Hom Poe, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Hong, alias Hom Poe, and he was arrested thereon on the 24th day of July, 1902.

And afterwards and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the Chinese
37 exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Hong, alias Hom Poe, was not such a merchant and was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Hong, alias Hom Poe, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

38 Therefore it is hereby ordered, adjudged, and decreed that the said Tom Hong, alias Hom Poe, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed): Order of deportation. Filed and entered the 30th day of March, 1903.

39 District court of the United States, eastern district of New York.

UNITED STATES
against
TOM HONG, ALIAS HOM POE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Court,
Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

40 United States Supreme Court.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Tom Hong, alias Hom Poe, the appellant herein, hereby applies for an allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court

(Endorsed:) Appeal. Filed April 20, 1903.

41 United States Supreme Court.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation of B. Lincoln Benedict, United States commissioner, for his assignment of errors, herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the Borough of Manhattan, city of New York, which business was conducted under the name of a firm of which he was a member, and in not holding that the

42 appellant was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the

Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of April 29th, 1902, in conjunction with the treaty between the United States and China promulgated in 1894, required a holding that the provision of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers
43 residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed, April 20, 1903.

44 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, Justice.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered, that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

45 In the matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit, in the case of The United States vs. Pin Kwan, requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case which differed from the present one. Admitting the distinction I do not think the United
46 States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kit, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kit, Tom Hong, and Tom Dock, made on the 18th day of Dec., 1902, and remaining on file in my office.

[L. S.] B. LINCOLN BENEDICT,
U. S. Comm.

47 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of the United States against Tom Hong, alias Hom Poe, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKES,
Deputy Clerk.

48 UNITED STATES OF AMERICA, ss:

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the district court of the United States for the eastern district of

New York, wherein Tom Hong, alias Hom Poe, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18961. E. New York, D. C. U. S. Term No. 310. Tom Hong, alias Hom Poe, appellant, vs. the United States. Filed June 2nd, 1903. Received office Supreme Court of U. S. May 28, 1903.

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27168

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 311.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18962.)

27169

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 311.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8904—03——1

1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Tom Dock, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore, deponent complains and prays that a warrant of arrest may issue against the said Tom Dock that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed, July 24, 1902.

2 The President of the United States of America. To the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Tom Dock was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence, as required by law, contrary to the statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Tom Dock wherever he may be found, and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence, according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner
for the Eastern District of New York.

3 U. S. commissioner's office, eastern district of New York.
The United States of America vs. Tom Dock.
Warrant to apprehend. Bail in $500 taken July 25th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Tom Dock, arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 25, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
TOM DOCK ALIAS HOM DOCK. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jeakins, a Chinese inspector, regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Tom Dock on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Tom Dock, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me the said U. S. commissioner, at which hearing the said Tom Dock alias Hom Dock by his counsel claimed to have been a merchant doing business in the United States in 1893 and 1894, and to be lawfully entitled to be and remain in the United States without obtaining certificate of residence as required by law for a Chinese laborer:

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Tom Dock alias Hom Dock was not in 1893 and 1894 a merchant doing business within the meaning of the statutes in such case made and provided, and being a Chinese laborer found without certificate of residence as required by law is unlawfully within the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Tom Dock alias Hom Dock be removed from the United States to the country from which he came, to wit, the Empire of China.

6 Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Tom Dock on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Tom Dock, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and on continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been a merchant

8 doing business in the United States on the 3rd day of November, 1893, and lawfully entitled to be and remain in the United States, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, was not a merchant within the meaning of the statutes in such case provided, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and having no certificate of residence as required by law.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18 day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Tom Dock, alias Hom Dock, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal at Brooklyn, in said district, this 27 day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed December 29, 1902.

10 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 5th, 1902.

Appearances: George H. Pettit, esq., United States district att'y; by Mr. Howell, Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge; by Mr. McManus, for the prisoner.

It is conceded that the defendant, Tom Dock, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 510 Myrtle avenue, Brookly, by a Chinese inspector, who found him there working as a laudryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrent issued by Uni ed States Commissioner Benedict, after having been in the custody of the United States
11 Chinese inspector until the warrant was issued. It is admitted that defendant failed to produce a certificate authorized by the Government upon demand.

Mr. MCMANUS: We make the same motions for the discharge of the defendant that were made in the case of Chu Do. First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893. Second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893. Third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned are repealed by implication by the act of 1902. Fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law. Fifth, upon the ground that the evidence, if any, is barred by the stat-
12 ute of limitations. Sixth, upon the ground that the arrest was not effected in a manner provided by law.

(Motion denied. Exception.)

Mr. Howell states that the Government's case is in, as per stipulation.

The interpreter, George Moy Way, duly sworn.

TOM DOCK, called as a witness on his own behalf, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. What is your name?
A. Tom Dock.
Q. How old are you?
A. 51 years old.
Q. What is your present occupation?
A. Keep a laundry.
Q. And where is your laundry?
A. 510 Myrtle avenue.
Q. How long have you been in business there?
A. Seven years.

Q. How long have you been in the United States?
A. United States—been in New York 20 years.
Q. Been 20 years in New York?
A. Yes.
Q. What was your occupation—what was your business from the years 1891 to 1895?
A. '82, '83, '84, '86, I kept a laundry down there in Hicks street.

13 Q. Brooklyn?
A. Yes.
Q. For those four years?
A. Four blocks down there.
Q. What did you do after that?
A. Laundry.
Q. What did you do after '86?
A. '86 I sold that store; I go to San Francisco three years.
Q. What were you doing there?
A. I came back 1889.
Q. Came back to New York in 1889?
A. Yes.
Q. What did you do after you came back to New York?
A. I came back to New York 1891; open store.
Q. What kind of store?
A. Chinese groceries.
Q. Were you one of the proprietors?
A. A company.
Q. Were you a member of the company?
A. Yes.
Q. And what was the name of the company?
A. Kwong Yen Ti.
Q. And where was your place of business?
A. Dover street.
Q. What number?
A. 15.
Q. 15 Dover street, in the borough of Manhattan, city of New York?
A. New York, yes.
Q. And how long did you continue in business there?
A. Open that 1891; broke up 1895.

14 Q. From 1891 to 1895. Were you engaged in buying and selling of Chinese groceries and other merchandise at that place during that time?
A. Yes, all the time.
Q. And as a member of that firm or company?
A. Yes.
Q. What did you do after 1895?
A. Work in the laundry.
Q. Where?
A. Myrtle avenue, 510.
Q. From the time that you first came to the United States and to the city of New York 20 years ago, have you ever been out of the United States?
A. No, I have not gone to China, I have never been back to China.

Cross-examination by Mr. IZARD:

Q. How old were you when you left China to come to this country the first time?

A. 19 years old.

Q. So you have been here more than 20 years?

A. 12 years in San Francisco.

Q. And how many years in New York?

A. 20 years.

Q. What did you do in San Francisco while you lived there?

A. Worked for a laundry; some family I worked two years.

Q. You didn't have any mercantile connections in San Francisco?

A. No; I never had.

15 Q. When you came to New York where did you first work?

A. Hicks street—18 Hicks.

Q. How long did you work at 18 Hicks street?

A. Four years.

Q. Where did you go from there—what were you doing at 18 Hicks street?

A. Laundry.

Q. And from 18 Hicks street where did you go?

A. Four years; went back to San Francisco.

Q. After working four years at Hicks street where did you go?

A. Go?

Q. Where did you go?

A. Where did I go? I go to Brooklyn Sunday school.

Q. Where did you go to work?

A. Go back to San Francisco.

Q. Went back to San Francisco—and how long did you stay in San Francisco that time?

A. Three years.

Q. What did you do during those three years in San Francisco?

A. Just working.

Q. What were you doing?

A. Working in Chinese store.

Q. What were you doing?

A. Selling.

Q. Were you a member of a firm at that time in San Francisco?

A. No.

16 Q. You were just hired to work in the store—is that right?

A. Yes.

Q. And how long did you stay in San Francisco then?

The COMMISSIONER. Three years?

A. Three years.

Q. And from San Francisco where did you go, Tom?

A. Came back to New York.

Q. And where did you work in New York when you first came back?

A. Doyer street.

Q. What number on Doyer street did you go to work at?

A. 15 Doyer street.

Q. Did you go immediately to 15 Doyer street when you came back from San Francisco?

A. After a few months I go to Doyer street when I came from San Francisco.

Q. What did you do at No. 15 Doyer street?

A. Bookkeeping.

Q. What was the name of this firm at No. 15 Doyer street what you kept books for?

A. Kwong Yen Ti.

Q. How many partners were there in that firm?

A. Five in all.

Q. Five in all, and what were their names at the time that you joined the firm?

17 A. Quon Lung, Kwong She, Hom Pone, Lee Git, and myself.

Q. Isn't Kwong She a woman's name?

A. No; a gentleman's name.

Q. How long were you a member of that firm, Tom?

A. Five years.

Q. Did your name appear in the firm name outside—the sign?

A. No.

Q. Did your name appear in the partnership articles of the concern?

A. Yes.

Q. Where are those partnership articles now, if you know?

(Objected to as irrelevant and immaterial. Objection overruled. Exception.)

A. The fellow had it who had the key.

Q. Has he got it now?

A. He has gone to San Francisco.

Q. Did he take the articles with him?

A. I don't know what he do, but he take care of that book.

Q. When he left didn't he leave the keys for somebody else to take care of the book?

A. No; he didn't give it to anybody.

Q. Whom did you buy your interest in that concern from—from whom did you buy the interest that you claim to have had in that store at 15 Doyer street?

18 A. We started together.

Q. And what became of your interest when you went out of it?

A. We closed up.

Q. You started in business together and closed up together; is that it?

A. Yes.

Q. What became of the other partners, if you know, after you closed up business?

A. Three in New York, other two went away.

Q. What three are in New York?

A. Hom Pone and Lee Git.

Q. Where are the others?

A. I heard Quon Lung gone to San Francisco, but I don't know the other.

Q. What did you do particularly in the store while you were a member of it?

A. Bookkeeper.

The COMMISSIONER. He said that before.

Q. You didn't do anything but keep the books?
A. No; that's all.
Q. You didn't buy any goods?
A. No.
Q. You didn't sell any goods?
A. Yes; sometime I have to sell.
Q. Whom did you sell to?
A. Sell some laundry; anybody going to buy goods.
19 Q. Do you remember any particular transaction in which you ever sold any goods?
(Objected to as wholly incompetent.)
The COMMISSIONER. Test his recollection.
A. I sell so many goods I don't remember.
Q. You don't remember anybody that you ever sold anything to?
A. No.
Q. Do you remember any laundry firm that you ever had a settlement with for goods bought?
A. I don't remember.
Q. Do you remember the name of any other concern that you ever sold anything to?
A. I sell retail; I forget all about it.
Q. Whom did you buy goods from—your concern?
The COMMISSIONER. He said he didn't buy.
Q. I ask you whom your firm bought from?
A. From China.
Q. Did you import goods?
A. Yes.
Q. Through what customs brokerage firm did you import?
A. Quon Lung knows it.
Q. I didn't ask you if Quon Lung knows; I ask if you know it.
A. I never went to customs house; don't know.
20 Q. You don't remember what customs firm your firm imported goods through?
A. I don't remember.
Q. Were there any entries on your books for custom duties paid?
A. I just put each on the book, but I don't remember; it was too many.
Q. So many customs brokerage firms that you did business through?
The COMMISSIONER. No, no; so many entries.
Q. Did you have different customs brokers through whom you did business?
A. I don't remember.
Q. You don't know whether you had any custom broker at all?
Mr. MCMANUS. He didn't say that.
The INTERPRETER. He said Quon Lung.
Mr. MCMANUS. Give us the answer he gave in full.
A. I don't remember, but only Quon Lung knows it.
Q. Only Quon Lung knows it?
(Motion to strike out all after "I don't remember" as not being responsive.)
Mr. MCMANUS. I object, as the whole answer is competent.
(Objection overruled. Exception.)

21 Mr. McMANUS. I am informed that the interpreter asked him about custom "officer" and not about custom "broker."

Mr. IZARD. I object to that going on the records.

Mr. McMANUS. I ask that the question be repeated, and that the word custom-house "broker" be put.

Mr. IZARD. We object to that comment going on the record.

The COMMISSIONER. Did you ask him customs "officer" or customs "broker?"

The INTERPRETER. I asked him custom-house and broker, if he know any broker.

Redirect examination by Mr. McMANUS:

Q. You were selling goods in San Francisco before you came to New York the last time; is that what you have testified to?

The COMMISSIONER. I think it was.

A. Yes.

Q. Who had charge of the business with custom-house brokers of your firm?

The COMMISSIONER. Here or in San Francisco?

Q. Here in New York, from 1891 to 1895?

A. Quon Lung.

22 Q. Was he one of the members of the firm?

A. Yes; my partner.

Q. Did he do all the business with the custom-house brokers?

A. Yes; he did that.

Recross-examinnation by Mr. IZARD.

Q. When you were selling in the store in San Francisco, you were not a member of the firm?

A. No.

Q. You were hired there as a clerk in that store?

A. Yes.

23 FRANCIS J. O'BRIEN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McMANUS:

Q. Mr. O'Brien, where do you reside?

A. 63 Duffield street.

Q. Duffield street, where?

A. In Brooklyn.

Q. And what is your business?

A. Trucking.

Q. And how long have you been engaged in the business of trucking?

A. 22 years.

Q. And where is your place of business?

A. 21 Pell street.

Q. And what kind of an express business are you engaged in there?

A. All kinds of express business.

Q. Are you engaged in doing business for Chinamen there in that vicinity?

A. Yes, sir; all kinds of Chinese goods I ship.

Q. And how many years have you been engaged in doing business for Chinamen?
A. 18 or 19 years.
Q. Do you know this defendant, Tom Dock?
A. Yes, sir.
Q. How long have you known him?
A. About ten or eleven years.
24 Q. What was his occupation, if you know, from the year 1891 to 1895?
A. Grocery—Chinese grocery.
Q. Where?
A. In 15 Doyer street.
Q. Did you visit that place?
A. Yes, sir.
Q. Did you see him there?
A. Yes, sir.
Q. How often did you go to that place?
A. Sometimes every day.
Q. What were his duties when you were there?
A. I saw him keeping books, and selling goods once in a while.
Q. Was he a member of the firm?
A. I was told so.
Q. What business was the firm engaged in?
A. Chinese groceries.
Q. Did you do express business for that firm?
A. Yes, sir.
Q. What was the name of the firm?
A. Kwong Yen Ti.
Q. Did he pay you money there?
A. Yes, sir.
Q. How often?
(Objected to.)
A. Yes; and if he wasn't there some of the other members paid me.
Q. (By Mr. IZARD.) He usually paid you?
A. Yes.
Q. (By Mr. MCMANUS.) You said if he wasn't there the other
25 members paid you?
A. In all these Chinese groceries you don't get paid by the same man all the time.
Q. What goods would you deliver them?
A. Sometimes I take them some trunks there, and sometimes other stuff.
Q. What kind of stuff?
A. Chinese groceries.
Q. Now, how long did he remain there to your knowledge?
A. To my knowledge I guess about three or four years.
Q. From '91 to when?
A. About '94 or '95.

Cross-examination by Mr. IZARD:

Q. You are positive about your identification of this man, Mr. O'Brien, are you?

A. Yes, sir.
Q. Seen him frequently since 1894 or '5?
A. Yes, sir; seen him a great many times since that time in Chinatown, buying goods over there.
Q. Always know him when you see him?
A. Yes, sir.
Q. You have been pretty intimate with Chinese for a good many years?
A. Yes, sir; 19 years.
Q. Seen a great many Chinese merchants?
A. Sometimes.
(Objected to.)
Q. Seen a great many, haven't you?
A. I couldn't remember.
26 Q. Have you seen as many as a hundred?
(Objected to. Objection overruled. Exception.)
Q. Who told you about the arrest of Tom Dock?
A. Who told me?
Q. Yes.
A. It is common talk around Chinatown about the Chinamen getting arrested.
Q. Who asked you to come and testify for Tom?
A. Himself.
Q. When?
A. Some time ago; a month ago.
Q. You haven't been here before to testify in this case?
A. No, sir.
Q. Hasn't it been set for trial several times before now?
A. Yes, sir; I have been here one day this week.
Q. That was the first time?
A. Yes, sir.
Q. He told you about a month ago; well, it has been set for trial two or three times within the last month.
A. I can't come over every day; I was late to-day; I can't come over every time they want me to come; I promised the man I would come to testify for him.
Q. Now, you testified that you did the trucking for this firm at No. 15 Doyer street for how many years?
A. Three or four years.
27 Q. Three or four years; you are not positive whether it was three or four years?
A. No, sir.
Q. Are you positive that it was as much as four years?
A. Well, I guess it must have been pretty near.
Q. Are you willing to swear that you did any trucking for them for a period of four years?
A. Well, I have sworn already.
Q. I want you to swear over again; just answer the question.
A. Three or four years; yes, sir.
Q. I didn't ask that. Are you willing to swear that you did trucking for four years for this firm at 15 Doyer street?
A. Well, I don't know.

Q. Are you willing to swear that you did trucking for Kwong Yen Ti for two years?

A. Yes, sir.

Q. What two years are you willing to swear that you did trucking for them?

A. I am telling you that I done the work between '91 and '95.

Q. What two years will you swear you did their trucking within those dates?

A. I have been doing the work—I can't tell you—I do their work all the time.

Q. You can answer my question.

Mr. McMANUS. He has answered it.

28 Q. I want to know what two years you are willing to swear that you were in the habit of going there and doing trucking there for that firm?

A. Between '91 and '92.

Q. And that covers the two years that you are absolutely certain about?

A. Yes.

Q. Now, you are sure that during the year 1891 and during the year 1892 or part of the year 1891 and the whole of the year 1892 and part of the year 1893 you did trucking for this concern?

A. Yes, sir.

Q. And you are not willing to swear that you did trucking for them at any other fixed period?

A. Yes; I am—I am not certain about 1895.

Q. What are you willing to swear about?

A. I will swear from 1891 to 1894.

Q. To what time in 1894?

A. Well, I couldn't tell you; I was trucking 1895, too.

Q. Up to what time in 1894 are you prepared to swear you did trucking for this firm?

A. I have got no books to tell me what time.

Q. (By Mr. McMANUS.) Give your best recollection, Mr. O'Brien, up to what time in 1894 did you do trucking for this firm?

A. It was up to August, 1894.

29 Q. (By Mr. IZARD.) From 1891 to August, 1894?

A. Yes, sir.

Q. Then you can swear now to a little longer time than you could a minute ago when you were only certain about these two years?

The COMMISSIONER. He didn't say it was only two years.

Q. What trucking did you do for them, Mr. O'Brien—trunks?

A. Trunks and different Chinese groceries.

Q. Now, for instance, where did you take the trunks to them from?

A. Sometimes I take them to laundries, sometimes take them to the railroad station.

Q. Was it a kind of receiving place for Chinese goods that were going to be distributed among the Chinamen?

A. They stayed in the store maybe for a week or two.

Q. And then went to the laundries?

A. The Chinese stopped in the store with their friends; they might stay there for a month or two.

Q. Well, what else did you truck for them?
A. Truck some Chinese laundry stuff on Mott street and some other laundry.
Q. Well, did you—what goods did you ever haul for them?
30 A. Such as starch and groceries, different groceries.
Q. Where from?
A. From the store.
Q. You never—all you got was from the store?
A. From that store; yes.
Q. Never delivered anything to the store?
A. Sometimes; yes.
Q. What?
A. Different stuff from other different stores.
Q. What interest did Tom Dock have in this store?
A. I couldn't tell you.
Q. Don't know anything about that?
A. I was only told that he was one of the partners.
Q. You don't know whether he had a dollar's worth of interest or not?
A. I don't know whether he had that or $500.
Q. Just answer my question, Mr. O'Brien; don't keep on talking; you don't know whether he had one dollar or a thousand dollars invested in that store?
A. No.
Q. You don't, as a matter of fact, know what the interest in the case of any one of the people in the store was?
A. No, sir.
31 Q. You never saw any partnership articles or articles of agreement incorporating that firm?
A. No, sir.
Q. Did you ever sell any goods to this firm?
A. Sell any goods?
Q. Yes.
A. No, sir.
Q. Never, anything?
A. No, sir.
Q. Did you ever see anybody else make sales of goods to them?
A. I couldn't tell you.
Q. You can tell me whether you have seen it or not, can't you?
A. No; I have never seen it.
Q. You have never seen anybody make any sales to this firm?
A. No, sir.
Q. Did you ever see Tom Dock's name in the sign in front of the store?
A. No, sir.
(Objected to as incompetent and immaterial and not required under the law.)
Q. You never have?
(Objection withdrawn.)
Q. Did you ever buy anything from the firm?
A. No, sir.
Q. So you have no personal knowledge, Mr. O'Brien, of either sales

or purchases by this concern of which this defendant claims to be a member?

32 A. Sales, or purchases; I didn't purchase anything.

Q. You have no personal knowledge of their sales or purchases?

A. No, sir.

Q. Of this firm?

A. None whatever.

Redirect examination by Mr. McMANUS:

Q. You have seen people in there?

A. Yes; but he hasn't asked me that question.

Q. You have seen people there buying?

A. Yes.

Q. And seen them deliver goods to them?

A. Yes, sir.

Q. And seen money paid to them by customers coming in there?

A. Yes, sir.

Q. And money paid by them?

A. Yes, sir.

Q. You have seen this man selling goods to people?

A. Yes, sir.

Q. And did you see him receiving money from them?

A. Yes, sir.

Q. You are not in the habit of having white people with whom you do business show you their copartnership articles?

A. No.

33 Q. They are not in the habit of telling you how much their interest in their firm is?

A. No, sir.

Q. Was there any difference in the way this man did business with you than in the manner in which the business was conducted with white people?

A. No, sir.

Q. Did they pay you for expressage the same as white men would, and conduct business in the same way?

A. Yes, sir.

Recross-examination by Mr. IZARD:

Q. Mr. O'Brien, if you say that the business was conducted in the same way by this firm as that of other firms, when you deliver to other firms and are paid your expressage, do you conclude from that that the party paying you is a member of the firm or a clerk there?

A. Sometimes a clerk in the store or a partner.

Q. You don't necessarily judge from being paid by a man that he is a partner, do you?

A. No, sir.

Q. (By Mr. McMANUS.) This man held himself out as a partner?

A. Yes, sir.

Q. Did he act the same as the other people in charge of the place?

A. Yes.

Adjourned to December 8th at 11 o'clock.

34 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 8th, 1902.*

Appearances: Same as before.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. Feldman, what is your occupation?
A. I am in the real estate business.
Q. And where is your place of business?
A. My place of business is 23½ Division street, with Max J. Forges.
Q. Mr. Feldman, how long have you been in business in the city of New York?
A. I have been in business for the last sixteen or seventeen years.
Q. Have you had charge of any real estate in what is known as Chinatown in the city of New York?
A. I do.
Q. For how many years?
A. I have it to-day; I am collecting rent in Chinatown to-day.
35 Q. Do you know the premises 15 Doyer street?
A. I do, sir.
Q. Have you had charge of those premises?
A. Yes, sir.
Q. Have you charge of them now?
A. Yes, sir.
Q. As agent?
A. As agent.
Q. And you collect the rents for those premises?
A. I do.
Q. How long have you had charge of those premises?
A. Had charge of those premises since 1890; back of that; well, '90 when I had full charge; formerly I used to help in collecting.
Q. Do you know this defendant?
A. I know him.
Q. How long have you known him?
A. Known him for a number of years.
Q. Where did you know him?
A. Known him in our premises, 15 Doyer street.
Q. What was he doing there?
A. He was in business—wholesale grocery.
Q. With whom?
A. A whole lot of them there; five of them.
Q. What was the name of the concern?
36 A. Kwong Yen Ti & Company.
Q. And what part of the premises 15 Doyer street did they occupy?

A. The store itself; now a mission house—the Rescue Band is there.
Q. You still have charge of those same premises?
A. I have, sir.
Q. Did you have charge of those premises from 1891 to 1895?
A. Yes, sir.
Q. Was this defendant there during those years?
A. He was.
Q. And what business did they carry on there?
A. Wholesale groceries.
Q. Was he a member of the firm or company who conducted business there?
A. He was a member.
(Objected to as to form of question.)
The COMMISSIONER. Ask if he knows.
Q. Do you know?
A. I do know.
Q. Was he?
A. Was he what?
Q. A member of the firm who conducted business in those premises?
A. As far as I know him there he was a member of that firm.
Q. What was he doing there?
37 (Objected to as conclusion; counsel asks to have it stricken out. Counsel for defendant asks that it stand.)
Q. Did you go there? How often would you visit those premises?
A. From the 1st of the month up until I got the rent paid.
Q. And how often would you be there during the month as a matter of fact?
A. Just from the case of——
The COMMISSIONER. This place?
A. (Continuing.) This place?
Q. Never mind about the other places.
A. This place, from the 1st of the month I used to go until I collected the rents; sometimes from three to five times I used to go there for the rent.
Q. Whom did you see there when you went?
A. Saw Hom.
Q. Saw this defendant there?
A. Yes, sir.
Q. Was he one of the people whom you talked to?
A. I used to find him at the books writing all the time; figuring.
Q. Did you have conversation with him about the rent at different times?
A. As far as I could make him speak to me. When I came there they knew who I was.
Q. He spoke pretty good English?
38 A. Considerable, as Chinamen can speak.
Q. Have you seen him selling goods there?
A. I did, sir.
Q. Over the counter?
A. Yes, sir.
Q. Was it in the same way as white people would do business?

A. In their Chinese way; selling goods in their own way.
Q. You saw him receive money there?
A. I guess I did.
Q. You know you saw him delivering goods?
A. I seen him lots of time delivering goods and receiving goods; used to see him getting out truck loads of goods—Chinese tea and rice. Most of my time I make my headquarters in that building, because I have separate apartments to collect.
Q. You have charge of the whole building?
A. Yes, sir.
Q. And this firm occupied what part of it?
A. Store and the basement. Now we have separated it and made it into two stores.
Q. You saw him there on the occasion of your visits between the years of '91 and '95?
A. I did, sir.

Q. Have you seen him, since that, around Chinatown?
39 A. Very seldom, I see him but not so often, after they were put out of that store there they disbanded; I didn't see him for some time; once in a while I used to see him come about there; some of his friends got a big Chinee restaurant on the first floor; I used to meet him there.
Q. Will you testify as to whether his conduct in that place when you visited it was the same as the conduct of any white merchant?
(Objected to, objectionable on every ground, irrelevant, immaterial, incompetent, has nothing to do with the issues in this case.)
The COMMISSIONER. We know that they did business in such a different fashion from the American merchant that I question whether your question is really what you want.
(Question withdrawn.)
Q. He was the one of the people you went to for the purpose of collecting the rent?
A. Yes.
Q. And has he paid you the rent?
A. Sometimes; there were other partners; it is a company; sometimes the other persons do, and sometimes he did, too.
Q. Did he hold himself out to you as one of the partners?
A. As one of the partners.

40 Cross-examination by Mr. IZARD:

Q. You testified, Mr. Feldman, that this man was a member of this firm?
A. I did.
Q. If you know that you know what the amount of his interest was in the firm?
A. He is a partner of the firm.
Q. You do know what his interest was?
The COMMISSIONER. The amount of capital he had.
A. Amount of capital I don't know; never went into that detail.
Q. Then you have doubtless seen his name among the other names of members of that firm?
A. I have.

Q. In what writing?

A. In Chinese.

Q. In what character of paper? You have examined it?

A. It was translated to me when we gave him a lease, the firm composed of Kwong Yen Ti & Company, and they were written down in order, going according to numbers, just from one to five, and I believe that he headed it, it is so many years since, but he was heading the contract; they signed a lease and it was translated in English.

Q. You undertake to swear that he was one of the signers for the lease of that building?

A. Kwong Yen Ti & Company.

41 Q. I was not speaking of that company, I am speaking of this defendant. You swear that he signed that lease?

A. He did.

Q. What has become of that lease?

A. I don't know.

Q. Won't your books show what became of it?

A. I collected from the firm.

Q. I am speaking of the lease.

A. That lease has expired.

The COMMISSIONER. Haven't you got it?

Q. Don't you keep a copy of it?

A. I don't think I have it at all; I know that we keep copies of all these leases; we give leases to a number of them, and as soon as they move out or the terms expire we destroy them.

Q. How do you keep track of them?

A. Just while they are in course.

Q. You mean to tell me that as a real-estate firm you issued leases——

A. Not a real-estate firm.

Q. You issue leases and don't keep any copy or record of it in your business?

A. We take a copy or a duplicate and give them one and we take one.

Q. Why didn't you say that before? What became of that duplicate?

A. We make no record of them. We don't keep them; we

42 destroy them the moment they are out of our place—of our premises; we don't make any record; we don't keep it any more; we don't keep this lease.

Q. What transactions have you ever had with this man as a member of the firm, and when were those had?

A. None; excepting for to collect the rent.

Q. Well, mention a time.

A. From the 1st of the—from the 1st of the month until about the 5th, since 1891, until their lease expired.

Q. And when did that lease expire?

A. In 1895.

Q. Will your books show that?

A. No.

Q. Why not?

A. Because we make no entries of that.

Q. You don't make any entry of all your lease accounts in your books?

A. We make no entries—we got the lease.

Q. Then when you collect this money you have no account open with that concern on your books?

A. They paid cash.

Q. What account did you keep of your cash receipts?

A. We give him credit in a little pocketbook.

Q. That is the only book you kept—you don't keep any ledger account?

A. No.

Q. So that at the end of the month or at the end of the year all you have got to show for your transactions during the years you were custodian of this building——

43 A. I am not the custodian.

Q. (Continued.) Well, agent for them, is contained in this pocket memorandum?

A. I collect on a slip, hand it to the landlord, give him every month the rent I collect, and I have no further bookkeeping transactions.

Q. Then you were personally agent of the landlord, and your real-estate firm was not?

A. I am collecting personally.

Q. Then the real-estate firm you were connected with had nothing to do with this lease?

A. I collect the rent and turn it in to the landlord.

The COMMISSIONER. You don't understand him, Mr. Feldman, or he doesn't understand you. He asks if you collect rent as the agent of the firm or the agent of the landlord.

(Mr. Izard's question objected to as misleading.)

Q. You are not connected with Forges' office?

A. I have kept my office in there.

Q. You are not connected with their office further than to have your desk there?

A. Further than collecting rents for them.

By the COMMISSIONER:

44 Q. Do you collect these rents for the landlord or for these people?

A. I collect these rents for Forges and Alexander, and they are the landlords.

Q. Then when you turn in your rents to Mr. Forges or Mr. Alexander, as the case may be, you merely strike off that whole month's transaction?

A. So-and-so has paid for that month.

Q. Does your memorandum book show that you collected rents from this defendant or that you collected rents from the firm of Kwong Yen Ti?

A. I had that on my memorandum; I haven't got it now.

Q. Had what?

A. I say, I have on my memorandum book when I turned in cash for various firms I was collecting, I used to turn in a slip collected of No. so-and-so, this No., this side, 1st floor, 2nd floor, each one by number; of course in each number, as people were living there, I didn't need to mention their names.

Q. And you never did?

A. No, sir; didn't need to.
Q. You testified that this defendant always paid you the rent?
A. Yes, sir.
The COMMISSIONER. No.
The WITNESS. I did not testify that.
Q. You testified he occasionally paid you the rent?
45 A. Occasionally, yes.
Q. Who generally paid the rent at that place?
A. Sometimes he did, sometimes some of his partners.
Q. Well, who, for instance, when he didn't?
A. Some of his partners.
Q. You can't mention their names?
A. I remember some of their names. A little fellow by the name of Kat.
Q. You collected from Lee Kat, and from whom else?
A. Another partner there who goes by the same name as he did, it is different in the spelling, Tom Pong.
Q. You collected from Lee Kat, and from the defendant, and from Tom Pong?
A. Yes.
Q. Were they all that you remember?
A. There were some others, there were some Yungs and Nums; two more were there.
Q. You also collected from them?
A. Yes; very seldom, these were the stand-bys of the firm.
Q. Yes; did you ever see the partnership articles of these people?
A. I did; yes.
Q. You did not?
A. I did see it, at least I couldn't understand their language, but they showed me a certain ticket that was made amongst them. I
46 couldn't read any Chinese?
Q. Then you don't know whether you saw the partnership articles or not?
A. That was shown to me as their arrangements.
Q. Who told you?
A. Their bookkeeper, Tom Dock.
Q. This defendant, what did he tell you?
A. When I first came he introduced all the other partners to me.
Q. You say he told you these were the partners, and you say that he introduced you to the partners. What did he say about the partnership articles?
A. He said those are the documents, whatever it was, he thought I could read his language.
Q. You think it was natural for him to conclude that you could read his language?
(Objected to. Objection overruled. Exception.)
Q. How did you learn about Tom Dock being in difficulties now?
A. He came to me?
Q. When?
A. Down to 23 Division street.
Q. When?
A. Some ten or twelve—fifteen days ago.

Q. Never came before that?
A. Never came before.
Q. You didn't know anything about his arrest until about ten days ago?
A. Why should I know of his arrest?
47 Q. You didn't know that he was arrested up to 10 or 12 days ago?
A. Something like that, he came to me and asked if I could identify him.
Q. Answer my question, I say not more than 15 days ago?
A. Something like that.
Q. You didn't know that he was arrested four or five months ago?
A. I did not.
Q. What did Tom Dock say to you when he came?
A. Told me whether I remember him, I said I did, whether I would go and testify that I know him that he was in business, I said I would.
Q. You did that just simply as a matter of accommodation, of course?
A. Accommodation.
Q. You have never seen these partnership articles but once?
(Objected to as already answered.)
The COMMISSIONER. Ask him if he saw them more than once.
Q. (By the COMMISSIONER.) This ticket that Tom Dock showed you the first time, did you ever see it again?
A. I did not see it any more.
Q. (By Mr. IZARD.) Would your memorandum of collections
48 show who paid the rent each time?
A. I told you my slip; no memorandum.
Q. It wouldn't show what individual paid it?
A. I am under oath.
Q. Are you able to swear that this defendant ever paid you that rent?
A. I have sworn to it, I am under oath and I don't swear again, I have made my statement; I know that this defendant has paid me the rent.
Q. Now you are very positive about it?
(Objected to as already answered.)
The COMMISSIONER. Answer it again, Mr. Feldman.
A. I am positive that this defendant has paid me the rent.
Q. Now, can you tell what year he paid you the rent?
A. '91 to '95.
Q. (By the COMMISSIONER.) Every year.
A. Not every year, his partners all these five years may have paid me sometimes.
Q. (By Mr. IZARD.) Can you swear that he paid you the rent at any time during the year 1891, this defendant, I am not talking about the firm?
A. I can.
Q. And you do swear?
A. I do swear.
49 Q. Do you swear that he paid you the rent in 1892?
A. I can't remember.
Q. Do you swear he paid you the rent in 1893, on your oath?

A. I am under oath and you ask me every time whether I swear. I am satisfied he did.

Q. Can you swear in 1894, this individual defendant?

(Objected to as immaterial, incompetent. Objection overruled. Exception.)

A. He did.

Q. You swear that?

A. Yes, sir.

Q. What month?

A. I can't remember.

Q. You can't remember the month?

A. The month; no, sir.

Q. If you can't remember the month, can you swear that he paid during the year——

(Same objection, ruling, and exception.)

Q. Can you swear that he paid you the rent in 1895?

A. I can.

Q. You do swear?

A. I do.

Q. How much rent did he pay you?

A. $65 per month.

Q. During the whole period of that lease?

A. During the whole period of that lease?

50 Q. And what was the period of that lease?

A. Five years.

Q. From what date?

A. From October, '91, until '95.

Q. Does that make five years?

A. Including '95.

Q. Have you been, during the whole time that you have been in business, at this No. 23½ Division street?

A. All the time, every time to be found there?

Q. For sixteen years, I believe you said?

A. I said since 1890.

Q. At 23½ Division street?

A. I answered sixteen years I am in business in New York City.

Q. But at Division street since 1890?

A. Since 1890.

Redirect examination by Mr. McMANUS:

Q. These Chinamen were pretty methodical and pretty prompt in payment of their bills?

A. Very prompt; up to two or three calls I collected always my rent.

Q. A good deal more prompt than most white people?

A. They have the name for that, paying their rents very prompt.

51 Recross-examination by Mr. HOWELL:

Mr. McMANUS. I object to two counsel examining one witness.

(Objection overruled. Exception.)

Mr. HOWELL. I want to ask this, as to what year it was that he testified that this particular defendant did not pay him during the period.

Mr. McMANUS. '92, that was.

Mr. HOWELL. I wanted him to tell, not you.

(Objected to on the ground that one counsel has taken up this examination and one should conclude it.)

The COMMISSIONER. Ask it, Mr. Howell.

(Exception.)

Q. How is it that you remember that during that one year of all these years that this man didn't pay you the rent?

A. I didn't say that.

The COMMISSIONER. That wasn't what he said. What he said was he couldn't remember whether he did pay in '92.

52 Mr. MCMANUS. I ask for the discharge of the defendant.

Mr. IZARD. We object. Objection based absolutely on the decision of the United States circuit court of appeals in the United States against Ping Kwong, and we would like to cite your honor that case and the case of United States against several Chinese, decisions by Judge Brown of the district of Rhode Island, which apply the Ping Kwong decision and differentiate between the Lee Kan decision, upon which the defendant, of course, relies, and the Ping Kwong decision, both circuit court appeals decisions, the only argument entirely sustained in Judge Lacombe's review of this case.

Decision reserved.

Adjourned to December 15th, at 11 o'clock; counsel to submit briefs.

53 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. McManus and Mr. Howell:
Mr. McManus presents argument.
Mr. Howell presents argument in opposition.
Mr. McManus moves for discharge of defendant.
Mr. Howell moves to deport.
Decision reserved.

54 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances same as before.

The commissioner hands counsel written opinion and orders deportation of defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

55 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Tom Dock, was not born in the United States, and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a
56 transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated, New York, December 27th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant,
170 Broadway, New York City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

57 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

58 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in

the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Tom Dock should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

ABE GRUBER.

Subscribed and sworn to before me this 29' day of December, 1902.

H. M. SPENCE,
Notary Public, Kings County.

Certificate filed in New York Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

59 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, borough of Brooklyn, on the 15th day
60 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Tom Dock is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as to in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order allowing appeal. Filed and entered the 29th day of December, 1902.

61 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO, ALIAS CHU GEE.

March 18, 1903.

62 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

63 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D., 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

The defendant above-named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant Tom Dock, alias Hom Dock, having come on for hearing before the said United States commissioner, and evidence having been taken therein and the said United States commissioner having, on the 18th day of December, 1902, entered a judgment herein, and
64 having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order

of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Tom Dock, alias Hom Dock, be removed to the country from whence he came, to wit,
65 the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*,

(Endorsed:) Order filed and entered the 28th day of March, 1903.

66 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Tom Dock, alias Hom Dock, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien; that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Dock, alias Hom Dock, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing
67 the respondent claimed that he was a merchant at the time the Chinese exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from

said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

68 Therefore, it is hereby ordered, adjudged, and decreed that the said Tom Dock, alias Hom Dock, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

69 District court of the United States, eastern district of New York.

UNITED STATES
against
TOM DOCK, ALIAS HOM DOCK.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty., Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

70 United States Supreme Court.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Tom Dock, alias Hom Dock, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

71 Ordered that this appeal shall operate as a supersedeas to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

72 United States Supreme Court.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation, by B. Lincoln Benedict, United States commissioner, for his assignment of errors, herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, erroneous, for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the borough of Manhattan, city of New York, which business was conducted

73 under the name of a firm of which he was a member; and in not holding that the appellant was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the

73 United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had

been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

75 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed.) Assignments of error. Filed April 20, 1903.

76 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms, in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, justice.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court therein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Torence J. McManus in support of the said motion, and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

77 In the Matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit in the case of The United States vs. Pin Kwan requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case which differed from the pres-

ent one. Admitting the distinction I do not think the United
78 States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kitt, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kitt, Tom Hong, and Tom Dock made on the 18th day of Dec., 1902, and remaining on file in my office.

B. LINCOLN BENEDICT,
[L. S.] *U. S. Comm.*

79 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Tom Dock, alias Hom Dock, made up to be transmitted to the United States Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk.*
By PERCY B. GILKES, *Deputy Clerk.*

80 UNITED STATES OF AMERICA, ss.

To The United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Tom Dock, alias Hom Dock, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18962, E. New York, D. C. U. S. Term No. 311. Tom Dock, alias Hom Dock, appellant, vs. The United States. Filed June 2, 1903. Received office Supreme Court of U. S., May 28, 1903.

O

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 312.

YUNG LEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 8, 1903.

(18963.)

27187

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 312.

YUNG LEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8905—03——1

1 EASTERN DISTRICT OF NEW YORK, ss:

J. H. Jenkins being duly sworn, deposes and says: That he is a Chinese inspector duly appointed under the statutes of the United States; that one Yung Lee a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate was, on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn in said district without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Yung Lee that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Yung Lee was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Yung Lee wherever he may be found, and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America vs. Yung Lee.

Warrant to apprehend. Bail in $500, taken July 28, 1902.

The within-named Yung Lee arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES } Judgment.
vs.
YUNG LEE. }

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Yung Lee, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law, whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Yung Lee, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas, thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Yung Lee by his counsel claimed to have been born in the United States and to be lawfully entitled to be and remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Yung Lee is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Yung Lee be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Yung Lee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Yung Lee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the
7 respondent claimed that he was a laborer who was unavoidably prevented from obtaining a certificate of residence within the time fixed by statute, and after a full hearing thereon it was found and adjudged by said commissioner that the said Yung Lee was not born in the United States and was without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner, that the said Yung Lee, as aforesaid, be removed from the United States to the country from whence he came, to-wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 *Certificate of United States Commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Yung Lee to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed, December 29, 1902.

9 UNITED STATES
vs.
YUNG LEE.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 15th, 1902.

Appearances: George H. Pettit, esq., United States district atty., by Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant, Yung Lee, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 34 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was

arrested under a warrant issued by United States Commissioner
10 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. McManus. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law;
11 fifth, upon the ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

Yung Lee, called as a witness on his own behalf, being duly sworn, testifies, through the interpreter, George Moy Way (also duly sworn), as follows:

Direct examination by Mr. McManus:

Q. Your name is Yung Lee?
A. Yes.
Q. Where do you live?
A. Myrtle avenue.
Q. What number Myrtle avenue?
A. 34 Myrtle avenue.
Q. How long have you been there?
A. Four days.
Q. When you were arrested?
A. Yes.
Q. How long have you been in the United States?
A. I have been in United States 23 years.
Q. 23 years, and you speak English a little?
A. No; I can't speak English.

Q. You do business with English-speaking people, don't you?
12 A. No; that is all I got to do, when the customer in my laundry he give me the bundle and I give him the ticket.
Q. You know how to make change, don't you?
A. Yes.
Q. What business have you been engaged in since you came to the United States?
A. I am a laundryman.
Q. How old are you?
A. I am forty years old.
Q. What were you doing during the years 1893 and 1894?

A. 1893, of November, I had the disease; sick; been sick to 1894. I perfectly cure my disease about August, 1894.
Q. What was the matter with you, if you know?
A. My foot was ill, kind of rheumatism, sore.
Q. And it kept you to your bed for several months; is that right?
A. Yes; I had that disease from November of '93 to August, '94.
Q. Prior to that what were you working at?
A. I work at Brooklyn.
Q. Where were you sick?
A. I was in New York when I was sick.
Q. In what place in New York?
A. Forsythe street.
Q. Forsythe street, what number, do you know?
A. 158.
Q. 158 Forsythe street, in the city of New York; was that a laundry?
A. Yes.
13 Q. And were you sick in the back of it, or where?
A. Yes.
Q. Did you have a doctor?
A. Yes.
Q. Was he a Chinese doctor or an American doctor?
A. Chinese doctor.
Q. What was his name?
A. Leong Yow.

Cross-examination by Mr. HOWELL:

Q. Was there anything else the matter with you beside your foot?
A. No; that is all, my foot.
Q. What did the Chinese doctor tell you was the matter with it?
A. Says rheumatism.
Q. What did you do while you were sick?
A. I can't work, but I get somebody work for me.
Q. What were you doing then?
A. I can't work at anything, but I stop in a laundry, get the doctor to call to see me.
Q. How many people lived in the house with you?
A. I lived there and had a fellow lived with me, because he working for me.
Q. And this fellow of whom you speak, was he a friend of yours?
A. He is my cousin, who work for me.
Q. Did he get a certificate, do you know?
14 (Objected to as immaterial, irrelevant, and incompetent. Objection sustained.)
Q. Did you make any effort to get a certificate for yourself?
A. No; I get no certificate.
Q. Did you try to get a certificate for yourself?
The INTERPRETER. Laborer's certificate?
Mr. HOWELL. Yes; did he try to get any certificate?
The COMMISSIONER. Not whether he did get one, but did he try to get one.
A. Of course I want to get one; but I can't walk, I can't do anything.

Q. Did you send the man who worked in the laundry with you for one?

(Objected to as incompetent, immaterial, and irrelevant, and not required by the act. Objection sustained.)

Q. When were you taken sick?

A. 1893.

Q. In what month?

A. November.

Redirect examination by Mr. McMANUS:

Q. You were sick in bed most of this time, weren't you?

A. Yes; I was sick in bed.

15 Q. And you were not able to go out until after August, were you?

A. Yes; until August, I was not able to go out.

Q. And that was August, 1894?

A. Yes.

DENNIS O'SULLIVAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McMANUS:

Q. Mr. O'Sullivan, what is your business?

A. I was in the grocery business for about 23 or 4 years.

Q. When did you retire from it?

A. A couple of years ago.

Q. Where was your place of business?

A. 28 and 30 Cherry street.

Q. 28 and 30 Cherry street. You were in business for yourself?

A. No, sir; I was not, I was salesman for John Randall.

16 Q. At that number?

A. Yes.

Q. Where do you reside now?

A. 130 Park Row.

Q. 130 Park Row?

A. Yes, sir.

Q. Do you know this defendant?

A. Yes, sir; well.

Q. How long have you known him?

A. I think it is, to the best of my opinion, somewhere in the latter part of the seventies; I think about '78 or '9, I think to the best of my opinion.

Q. And where did you know him first?

A. I knew him in 158 Forsythe street, him and his father.

Q. How many years was he there?

A. I believe he was there over twelve years.

Q. And how did you come to know him?

A. I always solicited trade.

Q. From whom?

A. From the Chinamen.

Q. Grocery trade?

A. Yes; rice, soap, starch, and glue, everything in that line.

Q. And it was your habit to visit——

A. Once a week.
Q. (Continued.) Chinamen all over New York?
A. Yes.
Q. Once a week?
A. New York and Brooklyn—Brooklyn was my principal route.
17 Q. You saw him, you say, at 158 Forsythe street for a number of years?
A. Yes.
Q. Do you remember seeing him there in the year '93 and '94?
A. He was sick then, laid up; he was a puny little creature, very puny, thin; I never thought he'd be the man he is to-day.
Q. You saw him there in bed and during a part of the year '93?
A. Yes.
Q. Do you remember when it was?
A. Well, he was there, I know, in April. In April he was always grumbling, but in about July and August in that time he was actually laid up.
Q. Of what year was that?
A. 1883.
Q. '83?
A. 1883—I mean 1893.
Q. 1893?
A. Yes.
Q. How long in the year '94 did that illness continue?
A. I changed my route after that; I changed my route; I was visiting there something about twelve years, his laundry, and I changed my route into Jersey.
Q. You saw him in bed there for several months about some time in '93?
A. Yes, sir; I can't testify to the exact time.
Q. When did you give up that route—around the end of the year, or when?
A. About September.
18 Q. How many times since have you seen him?
A. I haven't seen him a great deal for the last four or five years.
Q. You have seen him in this country for how many years off and on?
A. The first time I saw him was with his father in 158 Forsythe street. His father was an old man.

Cross-examination by Mr. HOWELL:

Q. What is your present business?
A. I am in the music business now.
Q. Where?
A. 130 Park Row.
Q. Is that where you live also?
A. No, sir; I also live at 128 Park Row; have a furnished room there.
Q. How long have you been in the music business?
A. Going on three years.
Q. What were you doing up to that time?
A. I was salesman.
Q. For the grocery store?

A. Yes, sir.
Q. And where was this grocery store?
A. 128 Park Row, 28 and 30 Cherry street.
Q. What did you say the name of the proprietor of that place was?
A. John Randall.
19 Q. How long were you with him?
A. Over 23 years with him.
Q. So you went with him *about 26 years* ago?
A. Yes.
Q. Do you remember just the year that you went with him?
A. I don't.
Q. What was the first line of business that you took up with him; what did you do?

A. I was on the route here in Brooklyn, I was getting up an imitation of cut roses, imitations of perfumery, and going over Brooklyn I used to visit these laundries; I was acting detective in getting up all these imitations or trade-marks.
Q. You were acting detective in getting up all these imitations?
A. I got up all the imitations on Pinaud's and Rubin's perfumeries.
Q. Amongst whom did you solicit your trade?
A. All druggists, first-class notion houses; in Brooklyn, New York, Philadelphia, Jersey, Buffalo, Albany, and every State as far as Louisiana.
Q. Was your trade—how did you come to have such a large trade with Chinamen?

A. As I was going around, Randall's was after me for three or four years to know if I wouldn't take up a route and sell, and that it
20 would bring me in a great deal better living. I told him I didn't care much about it. He says, "You are foolish," and at last, when we closed the cases, all these trade-mark cases, we got them into court, then I thought I would do better by going around and soliciting the Chinee trade.
Q. Did you solicit Chinese trade on a large or a small scale?
A. Very large. I sent more cases to Brooklyn in one week than they send now in four weeks.
Q. Did you come to know a great many Chinamen?
A. I believe there is not a man in New York, outside of another man who was in the store by the name of Bassell, who knows more of them.
Q. Give me something a little more definite than that. Do you know them in very large numbers, or do you know a half dozen of them, or do you know several hundred of them?
A. I do.
Q. And you did at that time?
A. Yes, sir.
Q. How long did you solicit trade from these people?
A. Over 23 years, over 23 years.
Q. And so you think that you must have come to know a great many hundreds?
A. Yes.

Q. Do you suppose you knew a thousand or two thousand?
21 A. I don't know how many I might know, but I don't think there is a man in New York that knew more of them, and more of them knows me than I know of them or can remember.

Q. How intimate were your business relations with them?
A. Very intimate.
Q. How much did you see of them?
A. There was not a night, after my day's work, scarce, that I wasn't in Chinatown looking for men to collect from and that would be there from out of the city that I get orders from.
Q. *How long is it since you have done any of this Chinese business*, now?
A. About a couple of years.
Q. When did you first meet this man, the defendant, who was on the stand?
A. To the best of my opinion about '79.
Q. What were your business dealings with him?
A. Selling rice, soap, chloride lime, potash, and such things used in Chinese laundries.
Q. Your business dealings with him were just the same as with mostly every Chinaman?
A. Yes, sir.
Q. Do you remember when you met each particular Chinaman?
A. No.

Q. How is it that you remember just when you met this
22 particular Chinaman here?

A. I always went, after I go off there in Jersey, I went to every store in Chinatown, and to other stores besides up in the Tenth Ward, and I used to go there in the evening after I had my supper.
(Motion to strike out as irresponsive.)
The WITNESS. I didn't know the exact time.
Q. You said about the year '79?
A. I had no particular hour to go to them.
Q. It is not the hour I am asking about; how is it that you recall when you first met this particular Chinaman, the defendant here, and don't remember when you met other Chinamen?
A. I had no particular hour to go to him or to anyone else.
Q. The hour wasn't the question.
A. He was on the route.
Q. How is it that you remember the year when you met this Chinaman, which you say was the year '79?
A. Yes.
Q. And don't remember when you met other Chinamen?
A. Everyone that was in New York that I had on my route, or that I couldn't take one night, I took them the next night.

By Mr. MCMANUS:

Q. What year did you begin this Chinese business?
23 Mr. HOWELL. He said about '79 or '80.

A. I told you I answered that question, it was my testimony in '79 I commenced business.

By the COMMISSIONER:

Q. You say in '79 you began this trade? Did you meet this man the first year?
A. He was there with his father.

By Mr. McMANUS:

Q. Was it the first year?

A. Yes.

Q. Do you remember any other Chinamen that you began trade with in '79? Give me the name?

A. I used to sell the whole of them in Mott street, stores and every place.

Q. How do you remember this man and don't remember the name of anybody else?

A. I know Goon Op, he is in Forsythe street.

Q. Then you do remember some others?

A. Yes; but he didn't call for me to answer that I knew them.

By Mr. HOWELL:

Q. Did you see many sick Chinamen in those days?

A. I have, sir.

Q. Do you remember what their various sicknesses were, and how long they were sick?

A. I am not a doctor to answer that question. You are aware of their sicknesses as well as I am.

24 Q. How is it that you remember this man's particular sickness that you testified to and don't remember about other people?

A. Because their place is very small, they had room for only two ironers in the place—the place was not big—and right beside the desk was their room, him and his father.

Q. He and his father; was anybody else in the laundry?

A. None when I went there first.

Q. When was anybody else in there?

A. I couldn't tell; it may be customers come in and out.

Q. When he was sick who was in there with him?

A. None that I know of; none when I first went there.

Q. That was 23 years ago that you first went there. Who was with him when he was sick—you said his father?

A. His father, in the laundry, ironing.

Q. With him?

A. Oh, two of them were in the laundry.

Q. But there was nobody else there at that time?

A. None that I saw there.

Q. What was his father's name?

A. It is a very odd name. I know his last name, it is spelt with three or four letters.

Q. But you don't remember beyond that?

A. I don't remember, it is so long.

25 Q. What particular reason is there for your recalling that this man was taken sick in bed along in June or July, didn't you say?

A. Yes; somewhere around there; I don't know the exact date.

Q. Of '93—what makes you particularly recall that time?

A. I will tell you, a very silly instance; he had a pipe, at least he promised me to give me a pipe which was like a trombone; he was not able to get it for me—this pipe.

Q. Are you sure that it was in the early summer that he was taken sick in bed?

A. It was in the summer; I can't state the date of it.
Q. And how long was he sick?
A. A good while, maybe four or five months; he was always ill.
Q. But you are sure that he went to bed sick in the summer sometime?
A. I saw him in bed; I don't know the exact date or the exact month, but I saw him in bed.
Q. Do you remember what year it was that you first saw him in bed; was it '93 or '94?
A. '93 I saw him in bed. The first time I saw him he was working in the laundry with his father.
26 Q. Do you know whether it was in the summer time or in cold weather that you saw that he went to bed there first?
A. In the summer time.
Q. How long was he sick?
A. I can't state how long he was sick.
Q. Didn't you say it was three or four or five months?
A. Maybe something about three or four months, or more.
Q. Or less, you don't remember?
A. I can't recall it to my mind.
Q. How did you happen to get in this case this time as a witness?
A. Him and two others—they were after me, and I am not on speaking terms with Randall since I left there; me and his sister had some words; I left there; he couldn't give my number.
Q. The Chinamen went to Randall's store to get you?
A. To see where I was, so Randall's couldn't tell them where I was living, but he referred him to 128 Park Row, where I was living; but he don't know where I was living, so him and two other Chinamen came up alooking for me, and the clerk of the house said there was one there by the name of O'Sullivan, but he said where he was he didn't know at the time.
Q. But he found you there eventually?
A. Yes.
27 Q. How long ago was that?
A. I believe within a week or ten days.
Q. Within a week or ten days?
A. Yes.
Q. I want to go back for just a moment. What was your method of conducting the business with these Chinamen, just go and see them?
A. Go and see whether they want anything.
Q. Were they in the habit of sending for you to go to see them?
A. No.
Q. Never sent for you?
A. They may have sent postal cards if I wasn't there in a week.
Q. Had you informed them where your place of business was?
A. The house informed them.
Q. Then you sold——
A. I sold on commission.
Q. But you sold to them on credit, or did you sell cash?
A. Sold them credit; some I used to get cash for.

By Mr. McManus:

Q. Pretty good pay, aren't they?
A. Some are and some very bad pay.

Redirect examination by Mr. McManus:

Q. You know he was sick in the summer?

A. I do.

Q. And you know that he was sick for several months?

A. Yes.

28 Q. And the sickness that you saw in the summer might have been lasting some time?

A. I couldn't tell how long it lasted.

(Objected to.)

Testimony closed.

Mr. McManus moves for the discharge of the prisoner on all the grounds set out in the cases of Chu Do and Lew Guey, as well as on the evidence.

Counsel for the Government asks for order of deportation.

Decision reserved.

29 UNITED STATES }
vs.
YUNG LEE. }

Before B. Lincoln Benedict, esq., United States Commissioner.

BROOKLYN, *December 18th, 1902.*

Present: Mr. Howell and Mr. McManus.

The commissioner hands counsel written opinion and orders deportation of defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

30 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Yung Lee, was not born in the United States and was a Chinese laborer without certificate of residence and without a right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the said order
31 was made, duly authenticated, may be sent to the said judge.

Dated, New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for defendant,
170 Broadway, Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed, December 29, 1902.

32 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

33 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Yung Lee should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

TERENCE J. MCMANUS.

Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

34 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon

the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, Borough of Brooklyn, on the 15th day
35 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Yung Lee is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered the 29th day of December, 1902.

36 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO, ALIAS CHU GEE.

March 18, 1903.

37 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

38 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the Borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
YUNG LEE.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Yung Lee, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of
39 December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Yung Lee be removed to the country from whence he came, to wit, the Empire
40 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

41 United States district court, eastern district of New York.

UNITED STATES
vs.
YUNG LEE.

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth in substance that one Yung Lee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Yung Lee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing
42 the respondent claimed that at the time the Chinese exclusion acts went into effect, and for six months thereafter, he was unable through illness to procure a certificate; and after a full hearing thereon it was found and adjudged by said commissioner that the said Yung Lee was not so incapacitated, and was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Yung Lee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas,
43 district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

Therefore it is hereby ordered, adjudged, and decreed that the said Yung Lee be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the Borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day. of March, 1903.

44 District court of the United States, eastern district of New York.

UNITED STATES
against
YUNG LEE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty., Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

45 United States Supreme Court.

YUNG LEE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Yung Lee, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

46 United States Supreme Court.

YUNG LEE
vs.
UNITED STATES.

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York

confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that the said Yung Lee was a Chinese laborer in the United States entitled to a certificate under the provisions of Section VI of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, and that having established to the satisfaction of the said commissioner by the testimony of a credible white
47 witness that he was a resident of the United States on and prior to the 5th day of May, 1892, it should have been held by such commissioner that by reason of the illness of the said Yung Lee he was unable to procure a certificate of residence and was entitled to such certificate.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese-exclusion acts, or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between
48 the United States and China, promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over the appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

49 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignment of error. Filed April 20, 1903.

50 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms, in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, justice.

YUNG LEE, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein, the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus, in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered that the said motion be and the same hereby is granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

51 Before B. L. Benedict, U. S. commissioner, eastern district of New York.

In the matter of Yung Lee.

In this case it is sought to be shown that the Chinese person named, who was a laborer, did not procure the certificate of residence from a collector of internal revenue as required by sec. 6 of November 3, 1893, because he was unavoidably prevented from so doing by sickness until after the expiration of the time set by the statute within which such certificate might be given. It is established to my satisfaction and by a credible white witness that he was resident in the United States on the 5th of May, 1892; but it is not clearly established and to my satisfaction that he was unable through sickness during all the time given by the statute to obtain a certificate of residence. It follows that he must be found and adjudged to be unlawfully within the United States.

52 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Yung Lee, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.]

RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKS,
Deputy Clerk.

53 UNITED STATES OF AMERICA, ss:

To the United States greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Yung Lee is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

54 (Indorsement on cover:) File No. 18963. E. New York, D. C. U. S. Term No. 312. Yung Lee, appellant, *vs.* The United States. Filed June 2d, 1903.

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27198

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 313.

LEE KIT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18964.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 313.

LEE KIT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Lee Kit, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district, a certificate of residence, required by section 6 of the act of Congress, approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was, on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore, deponent complains and prays that a warrant of arrest may issue against the said Lee Kit, that he may be dealt with according to law.

Sworn to before me this 24th day of July, 1902.

J. H. JENKINS,
Chinese Inspector.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any, or either of them.

Whereas complaint on oath has been made to me, charging that Lee Kit was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer and without certificate of residence, as required by law and contrary to the Statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Lee Kit wherever he may be found and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America *v.* Lee Kit.

Warrant to apprehend. Bail in $500 taken July 28th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Lee Kit arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
v.
LEE KIT. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Lee Kit on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Lee Kit and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner; at which hearing the said Lee Kitt, by his counsel, claimed to have been a merchant doing business in the United States in 1893 and 1897, and therefore lawfully entitled to be and remain within the United States without obtaining a certificate of residence as required by law for Chinese laborers.

Now, after a full hearing thereon, it is by me found and adjudged, on this 18th day of December, 1902, that the said Lee Kit is a Chinese laborer found without certificate of residence as required by law within the United States; was not a merchant doing business within the meaning of the statutes in such case made and provided in the United States in 1893 and 1894, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Lee Kitt be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the
6 eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth, in substance, that one Lee Kit on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lee Kit and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner,

8 at which hearing the respondent claimed to have been a merchant doing business in the United States on the 3rd day of November, 1893, and lawfully entitled to be and remain therein, and after a full hearing thereon, it was found and adjudged by said commissioner that the said Lee Kit was not a merchant within the meaning of the statutes in such case made and provided, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lee Kit, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner Eastern District of New York..

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Lee Kit to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceeding before U. S. commissioner. Filed December 29, 1902.

10 UNITED STATES
vs.
LEE KIT.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 8th, 1902.

Appearances: George H. Pettit, esq., United States district atty., by Mr. Howell; Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus for the prisoner.

It is conceded that the defendant, Lee Kit, was apprehended on the 23rd day of July, 1902, without a warrant, at a laundry on Myrtle avenue, Brooklyn, New York, by a Chinese inspector who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner
11 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. MCMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the
12 ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. Feldman, do you know this defendant?

A. I do.

Q. How long have you known him?

A. I have known him ever since '91.

Q. Where did you know him then?

A. Know him as a member of the firm of Kwong Yen Ti & Company.

Q. Is that the man you referred to in the testimony in the case of Tom Dock as Kat?

A. Lee Kat.

Q. Did you see him in there?

A. I did, sir.

Q. How often would you see him in there?
A. As often as I came to the place for to collect the rent.
Q. And what was his business there?
A. Member of the firm; I find him there.
13 Q. Was he one of the people who were present when, or about, the time the lease was signed for those premises?
A. He was introduced to me by Tom Dock as one of the firm.
Q. Have you seen him in the place doing anything?
A. He has paid my rent—seen him working in there.
Q. Did you ever see him selling goods there?
A. I did.
Q. To whom; can you tell?
A. No; to their own Chinamen.
Q. What kind of goods was he selling there?
A. Teas and various importations of China.
Q. Was this a large or small store?
A. Fair—fair store, and large basement.
Q. The basement and the ground floor?
A. Yes, sir.
Q. What was he doing?
A. I haven't followed him; I know he was selling goods when I came there; as often as I came I saw him busy.
Q. He would sell goods?
A. Yes.
Q. The other, Tom Dock, was the bookkeeper, and sold goods also?
A. Yes.
Q. And Tom Hong, what did he do?
A. He was also one of the men selling goods.
Q. You are certain of the time between 1891 and 1895?
14 A. Yes, sir.
Q. And it was the same firm of Kwong Yen Ti & Company?
A. Kwong Yen Ti & Company.
Q. And your testimony as to him, his being there, will be substantially as in these other cases?
A. Just the same.

Cross-examination by Mr. HOWELL:

Q. Mr. Feldman, how do you know that this man, Le Kit, was a member of the firm of Kwong Yen Ti & Company?
A. Because he was introduced to me as a member of that firm.
A. By whom?
Q. By Tom Dock.
Q. By what other means do you know that Lee Kit was a member of that firm?
A. No other means.
Q. Did you ever see the articles of copartnership signed by the members of the firm?
A. I did.
Q. Is your view of that one of the things upon which you base your knowledge of the existence of the partnership?
A. Yes, and various other reasons.

Q. Then, there was another way that you knew there was a partnership?

A. When you ask the question I will answer.

The COMMISSIONER. He did ask, and you said, "No other reasons." Put it again.

15 Q. (Repeated.) By what other means do you know that Lee Kit was a member of that firm?

A. I don't understand your question.

Q. How did you know that this paper or instrument shown you constituted the articles of copartnership?

A. They said so.

Q. You don't know in any other way, do you?

A. No, sir.

Q. In what language was it written?

A. Their own language.

Q. What was the occasion of their telling you that these were their copartnership articles?

A. I came there to collect the first rent.

Q. Did you ask them whether they were members of a firm?

A. Yes, sir.

Q. Did you ask them for any proof as to whether they were members of a firm?

A. I didn't ask for proofs.

Q. Then why did they show it to you?

(Objected to as calling for conclusion. Objection sustained.)

Q. What was the occasion of their showing you these alleged articles of partnership?

16 A. Introducing their five partners as members of the firm of Kwong Yen Ti & Company to the collector for the landlord.

Q. What I want to know is this: What brought out that paper?

(Objected to as incompetent and in the nature of speculation; counsel wants the witness to read a meaning into these other witnesses' minds. Question excluded.)

Q. Then the only way that you know there was a partnership in that place was this, was it not, just answer this "yes" or "no," whether this is so: That the various members of a firm told you that there was a partnership and that they were members of a firm, and they showed to you a paper that they said was the articles of copartnership?

(Objected to as already answered. Objection sustained.)

Q. You say that you collected rents for a firm up at 23½ Division street?

(Objected to as misleading.)

Q. Well, firm or some agent up there, it doesn't make any difference what the names were, for parties at 23½ Division street, is that so?

A. I did.

17 Q. Many of their tenants, you testify in one of the other cases, were Chinamen in Chinatown?

A. Yes, sir.

Q. Did they have a large tenantry down in Chinatown there or were there only a few people?

A. Quite a number.

Q. What do you mean by "quite a number?"
A. I can't give you dimensions of——
Q. Do you mean there were six or eight firms?
A. Firms?
Q. Or were there forty or fifty people whom they had down there?
A. They ranged differently, firms and individuals.
Q. Well, from how many houses do you suppose you collected the rents down there?
(Question stricken out.)
Q. From how many individuals or partnerships or companies did you collect rents down there, in Chinatown?
A. Various ones.
Q. (By the COMMISSIONER.) How many?
A. I can't tell exactly.
Q. (By Mr. HOWELL.) Was it few or many?
A. Various—quite a few.
Q. How many do you think?
18 A. I can't give any exact number.
Q. Have you any idea whether it was six individuals, partnerships, or sixty?
A. I wouldn't put myself down to a number.
Q. But can't you give the court any idea whatever?
A. I wouldn't venture at all, unless I would first go and look it over.
Q. You remember all the members of this partnership—you have testified as to them?
A. I do.
Q. And you did your business with them between the years '91 and '95?
A. I did.
Q. How is it that you can remember those particular individuals—who they were and what your business with them was—and can't remember how many different people you collected rent from down there?
(Objected to as matter of argument. Objection overruled. Exception.)
A. It happens that I remember just exactly in this case.
Q. Just in this case, but you don't remember outside of this case?
A. I do remember various other things, but what you ask me I can't remember.
19 Q. What do you mean when you say "just remember in this case?"
A. Perhaps in this I remember well, but others I would not be able to remember well.
Q. (By Mr. MCMANUS.) Lots of other cases you remember well if you are reminded of them?
A. If I would only be called to it.
Q. (By Mr. HOWELL.) Just specify some other people from whom you collected, rents down there.
A. Various ones.
Q. Who?
A. Various.
Q. I know, but I want to know who?

A. I have lots of them—Ham Kaw——
Q. Where are they?
A. Up in the first floor.
Q. Of what address?
A. Of 15 Doyer street.
Q. Who else?
A. Sam Ti & Company.
Q. Sam Ti & Company?
A. Yes, sir.
Q. Where were they?
A. They were on the same floor, one side.
Q. Outside of that building where did you collect rents from Chinamen?
A. Outside of that building I used to collect in Pell street.
Q. What number?
A. 12.
20 Q. Where else?
A. The housekeeper used to collect. I used to send her around and she used to take the money from those little rooms?
Q. You didn't go to these other places?
A. I did go to the storekeepers, and to the dwellers I used to send the housekeeper.
Q. Who were the storekeepers from whom you collected?
A. I don't remember; mention them to me, and I will remember.
Q. Do you remember any other place——
A. Any other place; no, sir.
Q. (Continued.) From which you collected rent?
A. No, sir.
Q. (By Mr. McManus.) Were there any other places in Chinatown where you collected rent?
A. Plenty.
Q. How many houses altogether?
A. 12, 17, and 15 Doyer street.
Q. (By Mr. Howell.) 15 Doyer street was occupied as a business place exclusively?
A. The two stores; yes.
Q. What was upstairs?
A. First floor Chinese restaurant, Chinese barbers, Chinese mission.
Q. Up above that?
21 A. That is the Morning Star Mission up above there, and Chinese dwellings separated in small apartments.
Q. On the top floor?
A. On the top floor is the housekeeper and various other little compartments.

Francis J. O'Brien, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McManus:

Q. Mr. O'Brien, you are the witness who was called in the cases of Tom Dock and Hom Pong?
A. Yes, sir.
Q. Do you know this defendant, Lee Kit?

A. Yes, sir.
Q. Did you know him between the years '91 and '95?
A. Yes, sir.
Q. Did you see him during that time?
A. Yes, sir.
Q. Where did you see him?
A. In the store.
22 Q. What store?
A. Kwong Yen Ti & Company.
Q. What number?
A. 15 Doyer street.
Q. In the borough of Manhattan, city of New York?
A. Yes, sir.
Q. What was he doing there?
A. Sometimes selling some of the goods.
Q. You repeat all the statements that you made as to your business, and so on, and as to your business with Chinamen?
A. Yes, sir.
Q. And how many years you were conducting the business?
A. Yes, sir.
Q. 19 years?
A. Yes, sir.
Q. In the borough of Manhattan?
A. Yes, sir.
Q. How often would you go to this place of Kwong Yen Ti & Company?
A. Twice a day.
Q. Regularly?
A. Every day.
Q. Would you bring goods there or take goods from there?
A. Sometimes take goods from there and sometimes take them to there.
Q. Did you ever have any business with this defendant, Lee Kit?
A. Yes, sir.
Q. What was the nature of it?
23 A. Sometimes he paid me for the goods and sometimes he give me goods to deliver.
Q. Did you ever see him selling goods there to people?
A. Yes, sir.
Q. And did he exercise authority about the place?
A. As I thought.
Q. Did he hold himself out as one of the partners in that firm of Kwong Yen Ti & Company?
A. I was told so.
Q. Did he hold himself out as one of them?
(Objected to as to form of question.)
Q. Who told you he was a partner?
A. I think it was the manager of the store.
Q. Which one was the manager?
A. He isn't here.
Q. What is his name, if you remember?
A. I think his name is Hom Lung.

Cross-examination by Mr. IZARD:

Q. When did you first find that you were going to testify in this case, Mr. O'Brien?

A. I told you, about a month ago.

Q. (By the COMMISSIONER.) This case?

A. The whole three cases, about a month ago.

24 Q. (By Mr. IZARD.) How did you happen not to mention Lee Kit as a partner when you gave the names of the partners the other day?

A. You didn't ask me the names of the partners.

(Objected to as misleading.)

Q. Mr. O'Brien, you testified that you had business with this defendant?

A. Yes, sir.

Q. What did you have in the way of business with him, specifically?

A. He paid me money for delivering stuff to the store.

Q. In what year did he pay you—this particular defendant—pay you money?

A. All the years of my dealings with the store.

Q. How many years was that?

A. I was dealing with the store, I guess, five years.

Q. Then you are able to positively remember that during each of these five years he actually paid you your truck bills?

A. Some time during the year.

Q. But certainly during the year you are certain he made at least one payment?

A. Yes, sir.

Q. What other transactions did you have?

A. None that I know of.

Q. You don't recall any other?

A. No.

25 Q. You don't know, of course, what interest he had in this store?

A. No.

Q. You don't know that he had any?

A. I was told so.

Q. I mean of your own knowledge.

A. No; I don't know.

Testimony closed.

Mr. McManus moves to discharge the prisoner on all the grounds stated in the Chu Do and Lew Guey cases, as well as on the evidence.

Counsel for the Government asks for an order of deportation.

Decision reserved.

26 UNITED STATES
vs.
LEE KIT.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. Howell and Mr. McManus.
Mr. McManus presents argument.
Mr. Howell presents argument in opposition.
Mr. McManus moves for the discharge of the defendant.
Mr. Howell moves to deport.
Decision reserved.

27 UNITED STATES
vs.
LEE KIT.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances: Same as before.
The commissioner hands counsel written opinion and orders deportation of defendant.
Mr. McManus takes exception to ruling and states he will appeal.

28 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action, by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Lee Kitt, was not born in the United States and was a Chinese laborer without certificate of residence and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reason specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, pro-
29 ceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 27th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

30 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested
31 by a Chinese inspector without any warrant for his arrest having been issued.

III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1902, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute'.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Lee Kit should be taken for a hearing.

32 VIII. For other errors appearing in the record of said trial.

Subscribed and sworn to before me this 29th day of December, 1902.

TERENCE J. MCMANUS.

WM. V. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

33 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
LEE KIT, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon

the United States district attorney, and that the said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district
34 court in and for the eastern district of New York, appointed to be held at the city of New York, Borough of Brooklyn, on the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Lee Kit is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered 29th day of December, 1902.

35 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, Lee Kit, and Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

36 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

37 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the Borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
LEE KIT.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Lee Kit, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of Decem-
38 ber, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Lee Kit be removed to the country from whence he came, to wit, the Empire
39 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

40 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth in substance that one Lee Kit, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lee Kit, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the
41 Chinese exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Lee Kit was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lee Kit, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

Therefore it is hereby ordered, adjudged, and decreed that the
42 said Lee Kit be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

43 District court of the United States, eastern district of New York.

UNITED STATES
against
LEE KIT.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty.,
Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

44 United States Supreme Court.

LEE KIT, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Lee Kit, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed and it is further

45 Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

46 United States Supreme Court.

LEE KIT
against
UNITED STATES

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York,

confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person, other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the borough of Manhattan, city of New York, which business was conducted
47 under the name of a firm of which he was a member, and in not holding that the appellant was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established, by affirmative proof, that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty
48 between the United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States), by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

49 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignment of error. Filed April 20, 1903.

50 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms

in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present, Hon. Edward B. Thomas, justice.

LEE KIT, APPELLANT,
v.
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is—

Ordered that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

51 In the matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit in the case of The United States vs. Pin Kwan requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case, which differed from the present one.

52 Admitting the distinction, I do not think the United States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kit, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kit, Tom Hong, and Tom Dock, made on the 18th day of Dec., 1902, and remaining on file in my office.

[L. S.] B. LINCOLN BENEDICT,
U. S. Comm.

53 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Lee Kit, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.]

RICHARD P. MORLE, *Clerk,*
By PERCY G. B. GILKES,
Deputy Clerk.

54 UNITED STATES OF AMERICA, ss:

To The United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Lee Kit is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18964, E. New York D. C. U. S. Term No. 313. Lee Kit, appellant, vs. The United States. Filed June 2d, 1903. Received office Supreme Court of U. S. May 28, 1903.

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IN THE

SUPREME COURT OF THE UNITED STATES.

AH HOW, alias LOUIE AH HOW, Appellant, vs. THE UNITED STATES.	No. 307.
CHU DO, alias CHU GEE, Appellant, vs. THE UNITED STATES.	No. 308.
LEW GUEY, Appellant, vs. THE UNITED STATES.	No. 309.
TOM HONG, alias HOM POE, Appellant, vs. THE UNITED STATES.	No. 310.
TOM DOCK, alias HOM DOCK, Appellant, vs. THE UNITED STATES.	No. 311.
YUN[illegible] Appellant, vs. THE UNITED STATES.	No. 312.
LEE KIT, Appellant, vs. THE UNITED STATES.	No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

Appellants' Brief in Opposition to Motion to Vacate Orders Admitting to Bail and to Dismiss or Affirm Appeals.

This is a motion to vacate orders authorizing the appellants above named to give bail in the sum of $500 each, which orders were made by Mr. Justice Peckham in April, 1903, after the allowance of appeals to this Court in the above-entitled cases arising out of the Chinese Exclusion Acts; a motion to dismiss or affirm such appeals is also included.

The complaints against these defendants taken before United States Commissioner Benedict in the Eastern District of New York, under Section 6 of the Act of May 5th, 1892, as amended by the Act of November 3rd, 1893, charged that the defendants, being Chinese laborers not entitled to remain in the United States without a certificate, "did knowingly and wilfully * * * fail to obtain * * * a certificate * * * and having come unlawfully into the United States without a certificate," were "found within the jurisdiction of the United States at Brooklyn, in said District, without a certificate of residence as required by law." Their deportation was ordered by the Commissioner and the District Court for the Eastern District thereafter duly affirmed such order. Appeals were taken to this Court upon the ground that Treaty and Constitutional questions were involved. (Chin Bak Kan *v.* United States, 186 U. S., 193; U. S. *v.* Gue Lim, 176 U. S., 459; U. S. *v.* Wong Kim Ark, 169 U. S., 649.)

Preliminary.

These are the first cases which have come directly before this Court since the Fong Yue Ting case (149 U. S., 698) in which a consideration of the registration provisions of the Act of 1892, as amended by the Act of 1893, is involved.

These cases differ radically from nearly all those reported since the Fong Yue Ting case in this, that they are in no sense "entry" cases. It was practically conceded by the Government (no proof to the contrary whatever being offered) and expressly found by the Commissioner in nearly all of the cases that *the appellants had been residents of the United States for years.*

There are no disputed questions of fact which this Court is asked to review. The findings of fact are with the defendant on five of these cases, and all of them are in this Court purely and simply upon questions of law, it being contended that the Commissioner erred in his determination of the questions of law presented on the facts.

The Government's motion embraces two parts; first, the vacation of the orders for bail; and second, the dismissal or affirmance of the appeals. The grounds for each are fundamentally the same, the main attack being directed to the good faith of the appeals:

(*a*) Upon the ground of lack of merit in the facts; and

(*b*) The lack of novelty in the questions of law presented for review.

The right to bail under the statutes and authorities is discussed in the Government's brief at length; but it seems to be conceded from the whole argument that the Court has inherent power to admit to bail in these as well as in all other cases. The attack upon the good faith of the appellants can only be regarded as wholly gratuitous and unnecessary.

As to the Merit of the Facts:

A brief review of the general situation which obtained at the time these arrests were made is allowable in view of the fact that the learned Solicitor-General has seen fit to depart from the record in his presentation of the Government's motion.

These arrests as well as a number of arrests made in the Southern District of New York at about the same time under the direction of Ralph Izard, then Chinese Inspector at the Port of New York, were the occasion for an inquiry instituted by the Treasury Department into the official conduct of the said Ralph Izard, such Chinese Inspector, the result of which inquiry was the dismissal of Izard from the Government service. It was established that prior to and at about the time of the making of these arrests attempts were made by persons representing themselves to have come from Izard to compel the purchase by Chinese residents of New York and Brooklyn of bogus certificates of discharge. If they failed to make the purchase, arrest followed. It was further established that efforts were made to intimidate United States Commissioners as well as the United States Marshal at New York for the purpose of making the scheme effective.

In all the cases in which arrests were made in New York, the Commissioner discharged the prisoners upon the ground that fraud had been practised upon the Court in obtaining the warrants, and misrepresentation of fact had been made both to the Court and the District Attorney. The detailed reports involving all these matters are now of record in the Treasury Department.

The matter of these investigations we respectfully submit, is of more importance in the administration of the Chinese Exclusion laws and is entitled, we submit, to greater consideration at the hands of the Court than the mere averment that the so-called "McGettrick certificates" were fictitious and fraudulent; especially in view of the fact that the authenticity and genuineness of the certificate offered was not attacked at the hearing before the United States Commissioner.

It is not disputed by the learned Solicitor-General that McGettrick was a United States Commissioner at the time the certificate was granted, or that he had the power to act in Chinese cases. The particular question

which he passed upon in the Lew Guey case, No. 309, to wit, the question of citizenship, was one which under the recent decision in the case of Chin Bak Kan (186 U. S., 193), the Commissioner had the right to determine.

Now, as to the merit of the facts in the particular cases presented for review.

The Lew Guey Case (No. 309).—The certificate offered was in effect a judgment of the Commissioner, dated on the day of the hearing, adjudging the defendant on the evidence produced to be a citizen of the United States (fol. 9). Its authenticity was admitted (fol. 25). It was found in the defendant's possession at the time of his arrest (fol. 11). He was known by that name and was charged under that name. He testified to the circumstances of the hearing and described the physical appearance of the Commissioner (fol. 18).

The Chu Do case (No. 308), in which the "alternative 'uncle' appeared" is next the subject of the Government's attack.

The defendant shows that his father was taken sick; that an affidavit from him was offered; that counsel for the defendant had consulted him in his office; that an offer to take his testimony by interrogatories was made (fols. 20-22).

As to the Merchant Cases.—Three of these defendants, Tom Dock, alias Hom Dock, No. 311; Tom Hong, alias Hom Poe, No. 310, and Lee Kit, No. 313, were copartners with others at 15 Doyer Street, in the City of New York, as members of the firm of Kwong Yen Ti & Co., from the years 1891 to 1895 inclusive (fol. 17). Tom Dock has been in the United States for over thirty-two years.

Tom Hong and Tom Dock were arrested at the same place, No. 510 Myrtle Avenue, in Brooklyn, and the third, Lee Kit, was arrested a block away on Myrtle Avenue.

The witness Feldman, was the agent of the premises 15 Doyer Street. He swore that he saw the defendant Tom Dock, sign the lease (fol. 31), that he collected rents from each of the defendants, that he saw each of them selling and receiving goods and shipping goods. He was introduced to each of the other defendants as partners at the time they entered into possession, and was shown the copartnership articles (fol. 46).

The witness O'Brien, an expressman, testified that he did business for each of these defendants, in the way of shipping goods for each of them as members of this firm and delivered goods to them. There was no dispute whatever as to the fact that these men were engaged in business. In fact, the Commissioner expressly so held, saying in his opinion:

"*The proofs furnished in these cases are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894*" (Tom Hong Record, page 17; Lee Kit Record, page 18; Tom Dock Record, page 30).

The Commissioners' findings on the facts were clearly justified.

Our contention is that his conclusions of law based on these facts were erroneous. He was satisfied that they were merchants but he was not satisfied that their status was established within the doctrine laid down in the case of U. S. *v.* Pin Qwan, 100 F. R., 609, where the construction of the statute defining "merchant" was concededly *obiter*.

In his review of the testimony in these three cases, the learned Solicitor-General rather ingenuously overlooked the fact that the situation not only warranted but demanded that the witness in one case should testify in the other two, as to the occupation of the defendants from 1891 to 1895. *Each was a merchant, each a member of the same firm at the same place of business.*

He also overlooks the fact that in the one remaining merchant's case (Ah How, No. 307) another witness,

(one whom the Commissioner in the Yung Lee case designated as a credible white witness) gave the testimony.

In the Yung Lee case, it was established to the Commissioner's satisfaction by the testimony of a credible white witness that the defendant was a resident of the United States on the 5th of May, 1892. (Opinion of Commissioner, page 19, Yung Lee Record, 312), but it was not clearly established to his satisfaction that the defendant was unable through sickness *during all the time* given by the statute to obtain a certificate of residence, his conclusion evidently being that the testimony of the illness during the whole period must also be furnished by a credible white witness. The defendant himself testified that he was unable to go out until August, 1894, which was beyond the period fixed by the statute.

In the Ah How case, No. 307, the same white witness who is designated in the Yung Lee case as a credible white witness by the Commissioner, testified that he had known the defendant for upwards of twelve years (page 7 of the Ah How Record), saw him handle goods, and heard him say that he was a partner.

So much for the merit of the facts in these cases. It would seem to counsel for the appellants that never before were cases presented to this Court by Chinese appellants in which the good faith of the appellants was so clearly demonstrated.

As to the Merit of the Assignment of Errors Presented for Review:

In these cases we ask for a construction of the statute of April 29th, 1902, which contains an important variation from the prior statutes re-enacting Chinese Exclusion Acts, in this to wit: That it provides merely that the prior acts are re-enacted, extended and continued only *"so far as the same are not inconsistent with Treaty obligations."*

(It may be mentioned, parenthetically, that this clause was introduced after counsel for the Chinese Minister, Honorable John W. Foster, had shown the Senate Committee on Immigration that many provisions of existing law were violative of our Treaty obligations with China.)

It is claimed by the appellants that the effect of this clause, coupled with the Treaty obligation to grant to Chinese persons, "either permanently or temporarily residing in the United States for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens," has been to supercede or revoke,

(*a*) The provisions of Section 3 of the Act of May 5th of 1892, as to the burden of proof being on Chinese persons;

(*b*) The provisions providing for the deportation of Chinese residents who failed to procure certificates of registration;

(*c*) The statutes claimed by the Government as denying the right to bail, these provisions being a discrimination against Chinese resident aliens in this that they are a denial of the protection secured to citizens of every other, much less the most favored nation.

That this clause of the act of 1902 has had the effect of displacing certain other provisions of the Chinese Exclusion Acts is recognized by the Attorney-General in an opinion dated December 4th, 1902 (24 Opinions, page 545), where he says:

> "There are other provisions of Section 7 of the Act of 1888 upon which these re-enactments and extensions in the Act of 1902, may take effect, *and the later Act expressly continued existing law only so far as the same are not inconsistent with Treaty obligations.*"

If the effect of the Act of 1902 is as appellants contend, they are brought within the protection of Article 4 of the Amendments to the Federal Constitution, providing that:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue, but on probable cause supported by oath and describing the place to be searched or the persons or things to be seized."

Other questions presented include,

(*a*) The question of the jurisdiction of the Commissioner to hear and determine an exclusion case where the status of the defendant as an American citizen had already been adjudicated by another Commissioner of co-ordinate power.

(*b*) The right to order the deportation of three Chinamen found by the Commissioner to have been engaged in business rather than in manual labor during the year 1894, when the Statute required Chinese laborers to register was in operation (involving the construction of the Merchant clause of the Act of 1893 for the first time in this Court).

(*c*) The right to order the deportation of a Chinaman found by competent white testimony to have been a resident of the United States during the time the registration laws were in operation and found to have been sick during a portion of that time, upon the mere ground that he might have registered during some portion of that period, notwithstanding the exception in the Act of 1893, and notwithstanding that at the hearing the defendant asked for permission to register (involving a construction of the 6th clause of the Act of 1893).

(*d*) The right of the Commissioner to proceed and

order deportation on complaints which were defective *not merely in form but in substance;* complaints which indicated the existence of a third statutory class, *i. e.,* Chinese persons coming into the United States without a certificate and failing to procure the same; a clause which the statutes do not recognize. A charge that these Chinese persons came into the United States without a certificate and having come, failed to procure one, is not an offense under the Chinese Exclusions law.

(*e*) The right to bail, pending appeals to this Court in these exclusion cases.

The doctrine of *stare decisis* does not apply to any of the questions raised by these appeals.

All of these matters are matters which should be determined on their merits; the construction of the Act of 1902, the effect of the clause hereinbefore pointed out are questions which must, sooner or later, be submitted to this Court for determination.

These appellants are rendering a public service in bringing these matters to the attention of the Court at this early day so that those charged with the administration of these laws may be properly advised as to their scope and purpose. Far from being "trivial" or "frivolous" the questions are of immeasurable importance to both the Government and these appellants as well as to all Chinese persons within the United States.

POINT I.

Section 3 of the Act of 1902, placing the burden of proof on Chinese defendants; section 6 of the same act as amended by the Act of 1893, in so far as it relates to the deportation of Chinese residents; the statutes claimed by the Government to forbid bail in these cases, have all been revoked or superceded by the Act of 1902, which (in providing for the re-enactment of the Chinese exclusion laws only in so far as the same were not inconsistent with treaty obligations) assures to Chinese persons, *either permanently or temporarily residing in the United States* for the protection of their persons and property all rights given by the laws of the United States to citizens of the most favored nation; the acts first above-mentioned being inconsistent with such treaty provision.

The question here is not as to the power of Congress to enact laws for the deportation of Chinese residents, even where such legislation would be in violation of treaty obligations, but rather whether the Act of 1902 did not indicate a legislative intent to restore to Chinese residents of the United States the rights and privileges which previous legislation had denied them. There is abundant reason for giving to this latest legislative expression as broad a construction as the appellants contend for.

If the earlier statutes were in conflict with the treaty (and that they were is conceded),

See Chae Chang Ping *v.* U. S. (130 U. S., 581);
Lem Moon Sing *v.* U. S. (158 U. S., 538);
Fong Yue Ting *v.* U. S. (149 U. S., 697),

surely there is a positive repugnance between them and an act which re-enacts these prior acts only in so far as they are not inconsistent with Treaty obligations.

Harmony is impossible between the provisions enumerated in the heading and the fourth clause of the Treaty of 1894 between the United States and China, where it was agreed that

> "Chinese laborers or Chinese of any other class either permanently or temporarily residing in the United States shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nations, excepting the right to become naturalized citizens."

These statutes are therefore repealed to the extent of their repugnancy.

Wood *v.* United States (16 Pet., 342, 363).
United States *v.* Tynen (11 Wall., 88).
South Carolina *v.* Stoll (17 Wall., 425).

> "Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry, whether rights secured by such stipulations shall be recognized and protected.

Chew Heong *v.* United States (112 U. S., 536).

Further it will be noted—(a) that the attention of Congress had been drawn to these statutory violations of the Treaty of 1894 by Mr. Foster (*ante*, p. 8); (b) that the conditions which obtained throughout the country with regard to Chinese residents were vastly different from those which confronted the country at the time of the passage of the earlier acts; (c) that it was recognized by Congress, that as to "entry" cases or "border" cases the exclusion laws were easy of enforcement. Therefore it was with the manifest purpose of restoring to Chinese residents the same rights, privileges and immunities which all other aliens of the United States enjoyed that this clause was incorporated in the Act of 1902.

The Courts have drawn a distinction between an alien who remains here and one who has left here and seeks to return. "While he (an alien) lawfully remains here he is entitled to the benefit and guarantees of life, liberty and property secured by the Constitution to all persons of whatever race within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his absence are as fully protected by the Supreme law of the land as if he were a naturalized citizen of the United States. But when he has voluntarily gone from the country and is beyond its jurisdiction, being an alien, he cannot re-enter the United States in violation of the will of the Government, as expressed in enactments of the law-making power."

Len Moon Sing *v.* U. S. (158 U. S., 547-548).
U. S. *v.* Wong Kin Ark (169 U. S., 700).

It was right and proper, therefore, for Congress, in view of all these considerations, to restore to these oppressed people the status which the Courts would have given them but for these enactments, which have been characterized as an exercise of "arbitrary and despotic power."

Fong Yue Ting *v.* U. S. (149 U. S., 697).

The provisions of Section 3 of the laws of 1892 are indisputably an unfair and oppressive discrimination directed against Chinese residents of the United States and is violative of Clause 4 of the treaty. It puts Chinese residents of the United States in the same class with those unlawfully seeking entrance. It clearly subjects them to restrictions which no other alien residents of the United States are subjected to. This is one of the evils which the Statute of 1902 was designed to remedy.

The provisions as to compulsory registration of Chinese laborers residing in the United States (Sect. 6 of the Laws of 1892 as amended by Laws of 1893) is as unfairly discriminating as is Section 3. This notwithstanding the fact that these provisions have been sustained in this Court in the Fong Yue Ting case. Certainly the subjects of no other nation are so discriminated against. And the hue and cry which would be raised if Congress sought to so discriminate against subjects of any other nation is beyond the power of our imagination to comprehend.

Though by Article V there seems to be a consent to the enforcement of these registration acts, it appears merely that the Chinese Government did not object to the enforcement of the same in so far as they were designed merely with a view of affording better protection to Chinese laborers in the United States in 1892.

To contend that this clause had any wider scope would be to urge that all of the provisions of that act were acceptable to China including, as well as any other, Section 4 of the Act of 1892, providing for imprisonment of Chinese persons, "convicted and adjudged to be not lawfully in the United States," including of course laborers who failed to register, which section was held to be violative of the 4th and 5th Amendment to the Federal Constitution.

Wong Wing *v.* United States, 163 U. S., 227.

While we deny that the statutes claimed by the

Government to forbid bail on appeal in these cases have the effect which the Government claims for them, we contend that granting that they possess this effect, they violate this same treaty provision. Some cases hold that these proceedings have all the elements of a civil case (Fong Yue Ting *v.* U. S.), while others hold that they have the elements of a criminal proceeding (Wong Wing *v.* U. S., 163 U. S.; *ex parte* Sing, 82 F. R., 22). In either event the Statutes work a denial of the right to bail which all other aliens as well as citizens have.

It also follows that the 8th Amendment to the Constitution providing that excessive bail should not be required, logically forbids a total denial of bail.

POINT II.

The objection as to the sufficiency of these complaints is not affected by the decision in the case of Chin Bak Kan, 186 U. S., 193.

In that case the objection "related to the lack of positive averment of the facts and as to the official character of the person who made the complaint." Also that the charge was made on information and belief, though that objection was not made at the hearing.

If these appellants had been brought before the Court charged with the offense designated in the Statute, the objection made would of course not be tenable, but no warrant should have issued upon a complaint which charged an offense not defined by any statute. There is no such clause mentioned in the statute such as is indicated in each of the complaints, *i. e.*, a Chinaman coming within the United States unlawfully and then failing to procure a certificate of residence. (Indicating thereby that their unlawful coming could thereafter be legalized by their obtaining a certificate.) A

proper case should have been made out in the complaint before these appellants should be subjected to these onerous burdens.

The complaints should have charged the defendants to have been within either of the following classes:

1. Those Chinese laborers who were entitled to remain in the United States before the passage of the Act of 1892 and who neglected, failed or refused to comply with its provisions or the provisions of the amendments of 1893.

2. Those Chinese laborers who came to the United States after the passage of the Act.

See Wong Wing *v.* U. S., 163 U. S., 235.

POINT III.

Neither the Act of 1892, nor the Act of 1893 amending it, required that Chinese persons who were merchants or who "were engaged in business rather than manual labor" should procure certificates of residence during the period when the Registration provisions were in force.

In the case of Tom Hong (310), Tom Dock (311) and Lee Kit (313) it should be noted, that as to the measure of proof offered with regard to the number of witnesses, the appellants complied with the requirements of the clause of the Act of 1893, requiring the testimony of two credible white witnesses to establish the merchant status of a Chinaman *seeking entrance to the United States* upon the ground that he was formerly a merchant engaged in business in the United States.

Now, what is a merchant within the meaning of the Act of 1893?

> "The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: *A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.*"

And what relevant judicial expression have we had as to this clause?

The Circuit Court of Appeals in the Ninth District, Mr. Justice McKenna writing the opinion, has held that where the other requirements of the Statute are met, the phrase requiring that the "business be conducted in his own (the merchant's) name," should be so broadly construed as to practically eliminate this requirement.

Lee Kan *v.* U. S. (62 F. R., 914).

We have, too, the Pinn Kwan case (100 F. R., 609, Opinion by Mr. Justice Lacombe).

The defendant in that case sought admission, and was admitted to the United States upon the production of a certificate required by Section 6 of the Act of 1884 (proof as to merchant status in China).

Some time after his admission his deportation was sought, the main ground urged being that the certificate purporting to show that he had been engaged in business as a *merchant in China* was defective. Other evidence was offered, to show that after his arrival in the United States he was engaged in business as a merchant in Buffalo.

The Court held that the certificate was the only proof properly admissible, and reversed the judgment of Mr.

Justice Coxe (94 F. R., 824), upon the ground that the certificate failed to satisfy the requirements of the Statute.

The Court's expression as to the amount of proof required to establish the status of merchant in the United States was, therefore, clearly *obiter dictum*.

But the difficulty we meet with here is that what the Court said on this branch of the case was regarded by the commissioner in these cases as controlling, even though conceded by him to be *obiter* (p. 31, Tom Dock Record).

He finds that these men were engaged "in business, rather than in manual labor," but contends that what their "interest" was did not appear. But on the question of "interest," what do we find?

In the Lee Kan case, we find quoted the debate on the "merchant" clause of the act which clause had been offered as an amendment by Mr. Geary, a member of the House, the author of an earlier act.

He says that the amendment merely required a Chinaman *asking to be admitted into the United States* to prove that for at least one year at some fixed place of business, he was engaged in buying and selling merchandise. "We do not demand that he shall have a dollar's worth of stock or a thousand dollars' worth."

The opinion shows clearly that the line of this argument was accepted by the Court as the correct expression of the legislative intent as regards this amendment.

We should not lose sight of the fact that in the cases at bar the defendants were not seeking admission, but each of them had been here for a period of upwards of twenty years.

Challenging the necessity for establishing their "interest" under the statute we contend that it would be difficult to find stronger proof than was furnished in these three cases to establish the interest of each of the defendants as partners and as merchants.

Each of them was introduced to the witness Feldman,

at the time the lease was executed, as a partner (pp. 18 & 20, Tom Dock Record).

The defendants signed the lease (p. 18). He, Feldman, collected rent from each at various times (p. 20). He saw each of them buying and selling goods. "These were the stand-bys of the firm" (p. 20). He was shown the articles of copartnership (p. 20) with the names of each of these defendants thereon.

The witness O'Brien testified to facts equally as convincing. The defendants, Tom Dock and Tom Hong, also testified to the nature of their interest and accounted for the failure to produce the copartnership articles, and accordingly, secondary evidence thereof was offered.

Surely, these records fulfill every requirement of the statute—concededly, they were not "engaged in manual labor"—were not laborers in 1894—and as laborers were the only class affected by these registration provisions, the Commissioner erred in not discharging the defendants.

"The question is not whether the respondent is a merchant and so exempt from registration, but whether he is a laborer and so liable to deportation for want of registration." He does not appear to be a laborer within either common understanding or the statutory definition of the term.

U. S. Mark Ying (a peddler), 76 Fed. Rep., 450.

If these defendants were engaged in business in 1894, rather than in manual labor, but since, through misfortune or other cause have become laborers, they are, nevertheless, not subject to these registration provisions.

The government has recognized that only laborers were affected by these provisions.

"The persons referred to in the Acts of Congress to which these regulations apply and whose immigration

into the United States is prohibited *are limited* to Chinese laborers."

(Treasury Doc., No. 14,542½) Nov. 25th, 1893.

The Ah How case (No. 307).

In the remaining "merchant" case (Ah How alias Louie Ah How, No. 307), no opinion was rendered, but the same influence which operated to bring about the conclusion in the other three merchant cases undoubtedly controlled the decision of the commissioner in this case; to wit, the opinion in the Pin Kwan case, coupled with the belief that all classes but merchants were required to register.

The witness Dennis O'Sullivan called by the defendant in this case is the same witness who was called in the Yung Lee case (No. 312) and declared by the commissioner to be a credible white witness. It is clearly established by his testimony that *the defendant was not a laborer during the registration period.* He knew the defendant in 1890, twelve years before the hearing.

Under the decisions above referred to, as well as under the practice of the department having charge of the registration of laborers, and in line with the suggestion contained in the Chu Poy case (81 F. R., 826), that a merchant's clerk is not a laborer within the meaning of the Statutes, it is respectfully urged that the commissioner erred in ordering deportation in this case.

POINT IV.

The doctrine enunciated in the case of U. S. v. Gue Lim et al. (176 U. S. 462), (as to wives and children of merchants not being called upon to produce certificates), should be followed in the cases of Chu Do (No. 308) and Lew Guey (No. 309), who were children at the period when the registration provisions as to laborers were in force.

It is plain that in these cases, these minors, Lew Guey, then being nine years of age, and Chu Do, fifteen years of age, could not obtain a laborer's certificate of residence.

See *In re* Tung Ying (19 F. R., 184),

where the Court regarded the production of merchants' certificates by childen of ten and fifteen years of age as an "absurdity."

This is simply a *casus omissus* on the part of Congress. There was no provision requiring children,—even children of laborers—to register, and now that these appellants have reached man's estate, this omission on the part of the Government should not be charged to them.

POINT V.

In the Yung Lee case (No. 312) the Commissioner erred in not discharging the defendant and in not ordering that a certificate of residence be issued to him.

The commissioner found that this defendant was "a resident in the United States on the 5th of May, 1892." In fact, it was shown by the same "credible white witness" that he knew the defendant as far back as 1878 or 1879.

The Statute merely requires that the fact of residence be estabished by the testimony of "one credible witness other than Chinese." The commissioner evidently assumed that this requirement applied also to the fact of illness. In this he was undoubtedly guilty of error. The testimony of the defendant, which was uncontradicted and unimpeached, showed that the condition of illness continued through the entire period covered by the Act.

The finding of the commissioner was clearly against the weight of evidence. The evidence as to the illness of the Chinaman was established in part by the testimony of the white witness. The defendant's evidence as to his illness was clear, positive and uncontradicted. There was no element of inherent improbability in it.

"A court is not at liberty to arbitrarily and without reason, reject or discredit the testimony of a witness upon the ground that he is a Chinaman."

Woey Ho *v.* U. S. (109 Fed. Rep., 888).

POINT VI.

Commissioner McGettrick had power to determine the question of citizenship (Chin Bak Kan v. U. S., 185 U. S. 193), and no statutory form of certificate or judgment being prescribed, the certificate delivered by the Commissioner to the defendant Lew Guey (Case No. 309) should have been admitted as an adjudication of his citizenship.

Its genuineness was admitted (fol. 25). It was not impeached in any way. It was admitted as evidence of a hearing (fol. 26). It was found in the possession of the defendant. This form has hitherto been accepted by judicial officers.

If there was any fraud in the issuance of the certificate, no evidence of it was offered.

In what other way than by a form of a certificate or judgment such as was here presented could the rights of any person of Chinese descent be protected?

The power to hear and determine necessarily carries with it the power to make this judgment or certificate.

The commissioner should have given the certificate the force and effect demanded for it, and erred in denying the motion for defendant's discharge upon the ground that his citizenship had been established.

POINT VII.

Bail should be allowed upon these appeals (a) under the statutes; (b) by virtue of numerous precedents; and (c) in the exercise of the inherent power of the Court.

Section 945 of the Revised Statutes authorizing bail in civil cases and sections 1014 and 1015 of the Revised Statutes and Rule 36 of the rules of this Court, providing for bail in criminal cases, surely include within their scope these cases, whether they may be regarded as having "all the elements of a civil action" or whether they may be regarded as *sui generis*. It has been the custom of the Courts both before and after the passage of the Acts of 1892 and 1893, to admit Chinese residents to bail, pending appeal in deportation cases. In the Lee Yen Tai case and the Chin Bak Kan case, the cases most recently decided in this Court, bail was permitted, and although a motion to vacate the orders for bail was made in the Chin Bak Kan case, no decision was ever rendered thereon.

In the cases at bar a motion for bail was made before Mr. Justice Peckham, who gave the matter careful consideration before granting the orders, it being a fact that the transcript of the testimony in one of the cases (Tom Dock, No. 311), was submitted to Mr. Justice Peckham for examination before he granted the orders for bail.

Counsel for these appellants have been, fortunately, able to procure a copy of an opinion handed down by Mr. Justice Lowell, of the District Court for the District of Massachusetts, upon the question of the right to bail in deportation cases, which opinion fully answers every ob-

jection made by the learned Solicitor-General in these cases upon the question of a ~~statutory~~ right to bail. The opinion is printed herewith in full, though it includes some matters that are not relevant to the questions at issue here.

The opinion follows,

Matter of Ah Tai, decided Tuesday, November 16th, 1903.

LOWELL, *J.* A Chinaman was complained of under the Chinese Exclusion Acts of 1892 and 1893 as being a Chinese laborer in the United States without authority. After hearing, the Commissioner ordered his deportation. He has duly appealed to me, and pending a hearing on his appeal, asks to be admitted to bail. The district attorney has opposed his petition and has objected that he cannot be bailed under the circumstances.

The bailing of Chinamen under the Exclusion Acts is not easily brought within the general principles governing the law of bail and recognizance. In Fong Yue Ting, 149 U. S., 698, it was held that the proceedings under these Acts are not criminal in their nature. It was there said "When the executive officer brings the Chinese laborer before the judge, in order that he may be heard, and the facts upon which depend his right to remain in the country be decided, a case is duly submitted to the judicial power; for here are all the elements of a civil case—a complainant, a defendant and a judge," p. 728. "The proceeding before a United States judge, as provided for in Section 6 of the Act of 1892, is in no proper sense a trial and sentence for a crime or offense," p. 730. See Li Sing *v.* U. S., 180, U. S. 486, 494. The decision of the first-mentioned case turned upon the nature of the proceedings for deportation. Had these been deemed criminal, the statue would have been held unconstitutional. It seems to follow that Chinamen whose deportation is sought by the United

States have not the right as persons accused of crime, to demand release upon bail.

On the other hand, if the proceedings for deportation are deemed civil in their nature, it is not easy to find authority for admission of the respondent bail, unless an arrest in a civil case necessarily imports the right to a release upon bail. The statutory provisions for special bail (Sec. 942), have little apparent application to a case like this, and Section 945 provides merely that certain officers may take bail, where bail is required or allowed. In the deportation of Chinese, the proceedings are *sui generis;* they are authoritatively declared to be civil in their essence, but they are somewhat criminal in their appearance. Thus the statutes speak of violation of the provisions of the Act, of arrest, conviction and imprisonment at hard labor. In judicial opinions the courts have spoken of testimony in a deportation case as incriminating the respondent; *Ex parte* Ling, 82 Fed., 22; of "the offense (using the word only for convenience)" and of "primitive provisions," *In re* Ng Loy Hoe, 53 Fed., 914; of "verified complaint" and "warrant," U. S. *v.* Wong Dep Ken, 57 Fed., 206. See U. S. *v.* Long Hop, 55 Fed., 58; of "presumption of innocence," *In re* Chu Poy, 81 Fed., 826, 828; of "a plea of not guilty" and "a finding of guilty," *In re* Tsu Tse Mee, 81 Fed., 562, *In re* Gut Lun, 83 Fed., 141, 142; of a respondent as "tried and convicted," U. S. *v.* Long Ho, 55 Fed., 58, 59.

In this and other districts, bail has been taken at some stage of the proceedings for deportation. This is the practice in the Districts of Vermont and Southern New York, both before the Commissioner's hearing and after an appeal to the judge. Until objection was made in this case, the practice in this district has been the same without objection. This has been the practice in the District of Maine until lately, when the legality of admitting to bail after the Commissioner's judgment of deportation has been mooted. Bail was taken in the case of Mrs. Gue Lim, 176 U. S., 459, in U. S. *v.* Moy

Lee, 109 Fed., 1, and has been recently taken, I am informed, by Mr. Justice Peckham in certain cases now pending before the Supreme Court. *See also* Chow Goo Pooi, 25 Fed., 77, 78. The admission to bail in proceedings for habeas corpus is governed by statute and has no application to the case at bar.

The Exclusion Acts themselves recognize by implication that bail is not altogether excluded in proceedings thereunder. Section 2 of the Act of 1893, by providing that a Chinaman shall not be admitted to bail at one stage of the proceedings, impliedly recognizes that he may be admitted to bail at another stage. Even in proceedings for extradition, the Supreme Court has refused to declare that courts were wholly without an inherent right of taking bail. It is also most convenient that bail should not be altogether excluded. Were bail never taken, the jails might be overcrowded, and the recent arrests in this city show that this danger is not imaginary. To hold bail altogether inadmissible under the Act would invalidate hundreds of existing recognizances.

The reported cases, the practice of many judges, the language of the statutes, and practical convenience all combine to suggest that bail should not be altogether excluded in proceedings for deportation. This court is not disposed to disregard consideration of such importance.

If bail be anywise admissible, it may ordinarily be taken pending an appeal, as well as before the original hearing. Thus it was said in Hudson *v.* Parker, 156 U. S., 227, 285, "The statutes of the United States have been framed upon the theory that a person accused of crime shall not until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction and pending a writ of error." The appeal is here to the district judge rather than to the district Court (U. S. *v.* Chow Loy, 115 Fed.), but there is nothing intrinsically improper in admission to bail

by a judge rather than by a court, nor does any reason appear why a respondent may not give bail to appear before a judge as well as before a court.

The Government relied chiefly upon an express prohibition of bail, after sentence of deportation by the Commissioner, supposed to be found in the second section of the Act of 1893. "Such order of deportation shall be executed by the United States marshal of the District within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order, such Chinese person shall remain in the custody of the United States marshal and shall not be admitted to bail." But this clause applies only where the order of deportation is final, and it is inapplicable while an appeal from the decision of the Commissioner is pending. That an appeal from the judgment of the Commissioner is analogous to an appeal from the judgment of an inferior court, was said in 22 Opp. Att. Gen., 340. Pending an appeal it is not the duty of the United States marshal to deport the Chinaman with all convenient dispatch, and so there is no sufficient reason why "pending the execution of such order, the Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail." Even after judgment of deportation by the judge, a Chinaman was temporarily discharged from custody because the marshal was without means of deporting him. (Ny Look, 56 Fed., 81.) To prevent a release upon bail under those circumstances, the prohibition just quoted was inserted by Congress.

The form of recognizance hitherto used in this District in proceedings for deportation is like that used in criminal cases. Before the Commissioner's hearing, he admits to bail. After his judgment of deportation and an appeal therefrom the recognizance has hitherto been taken by the clerk of the District Court, conditioned that the respondent shall appear before the District Court of the United States "from day to day of this present term, and from day to day and from term to

term thereafter, then and there to prosecute said appeal and to answer to such matters and things as shall be objected against him on behalf of the United States, and relating particularly to the said appeal now pending in said court."

The condition "to appear before the District Court" may have been improvidently adopted. Perhaps the recognizance should be entered into before the judge in person. This decision is not intended to debar the district Attorney from moving to change the form of condition or otherwise to modify the existing practice.

This is a proper case for the exercise of the inherent power of the Court to admit to bail in all cases.

Counsel for the appellants believe that the good faith of the appellants has already been abundantly established.

The years of residence in the United States of each of the appellants, the novel questions presented; the facts in almost every case being conceded to be as represented by the appellants; the importance of the questions not alone to these appellants, but to practically every Chinese resident of the United States; the fact that the Government does not show that any injury can be wrought or ever has been wrought by reason of the allowance of bail in these cases, are certainly considera-

~~facts in almost every case being conceded to be as repre-~~

tions which make for the exercise of that power to admit to bail which this Court, in the recent case of Wright *v.* Henkel (190 U. S., 40), would not hold that it did not possess.

POINT VIII.

Upon the right to appeal.

The right to appeal in these cases was conceded by the Government in the Chin Bak Kan case and was so held by this Court.

The appeals involve the determination of treaty and constitutional questions, and under 26 U. S., Stat., §5, as amended, a direct appeal to this Court is permitted.

In the Lee Yen Tai case the appeal was taken to this Court by the Government and it is not unreasonable to urge that this fact should operate as an estoppel of the Government's claim that Chinese appellants should not be permitted to appeal to this Court for the redress of what they believe to be grievous errors.

POINT IX.

The orders appealed from should be reversed and the defendants discharged.

Respectfully submitted,

FRANK S. BLACK,
TERENCE J. McMANUS,
RUSSELL H. LANDALE,
Counsel for Appellants.

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IN THE SUPREME COURT OF THE UNITED STATES.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES.	No. 307.
CHU DO, ALIAS CHU GOO, APPELLANT, v. THE UNITED STATES.	No. 308.
LEW GUEY, APPELLANT, v. THE UNITED STATES.	No. 309.
TOM HONG, ALIAS HOM POK, APPELLANT, v. THE UNITED STATES.	No. 310.
TOM DOCK, ALIAS HOM DOCK, APPELLANT, v. THE UNITED STATES.	No. 311.
YUNG LEE, APPELLANT, v. THE UNITED STATES.	No. 312.
LEE KIT, APPELLANT, v. THE UNITED STATES.	No. 313.

BRIEF FOR APPELLANTS ON APPEALS FROM ORDERS OF DEPORTATION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

AH HOW, alias LOUIE AH HOW, Appellant, vs. THE UNITED STATES.	307
CHU DO, alias CHU GEE, Appellant, vs. THE UNITED STATES.	308
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TOM HONG, alias HOM POE, Appellant, vs. THE UNITED STATES.	310
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YUNG LEE, Appellant, vs. THE UNITED STATES.	312
LEE KIT, Appellant, vs. THE UNITED STATES.	313

Brief for Appellants on Appeals from Orders of Deportation.

These are appeals from orders entered in the District Court of the United States, in and for the Eastern District of New York, affirming orders of deportation made by B. Lincoln Benedict, Esq., a United States Commissioner of the said District, directing the deportation of these appellants from the United States to China, upon the ground that they were found in the United States without certificate of residence.

Direct appeals were taken to this Court upon the ground that Treaty and Constitutional questions were involved. (Chin Bak Kan *v.* U. S., 186 U. S., 193; U. S. *v.* Gue Lim, 176 U. S., 459; U. S. *v.* Wong Kim Ark, 169 U. S., 649.) The Treaty and Constitutional questions were raised upon the preliminary hearing before the Commissioner.

The complaints, taken under Section 6 of the Act of May 5th, 1892, as amended by the Act of November 3rd, 1893, charged that the defendants, being Chinese laborers not entitled to remain in the United States without a certificate, "*did knowingly and wilfully* * * * *fail to obtain* * * * *a certificate,* * * * and having come unlawfully into the United States without a certificate," were "found within the jurisdiction of the United States at Brooklyn, in said District, without a certificate of residence as required by law." The same form of complaint was made in each case. (See page 1 of record in each case.)

These are the first cases which have come before this Court in which a construction of the Act of April 29th, 1902, re-enacting, extending and continuing all laws relating to the subject of Chinese exclusion, "so far as the same are not inconsistent with treaty obligations" is asked.

These are the first cases which have come before this Court since the Fong Yue Ting case (149 U. S., 698), in which a consideration of the registration provisions of

the Act of 1892, as amended by the Act of 1893, is involved.

These are in no sense "entry cases." The defendants were not arrested while seeking entrance to the United States, nor shortly after effecting entrance. The complaints assumed that the defendants were residents during the registration period fixed by the Acts of 1892 and 1893, and not a particle of testimony was introduced by the Government to controvert the fact of long years of residence in the United States, affirmatively established by each defendant. (In this connection it may be said that these are the first cases in this Court since the Fong Yue Ting case, in which the defendants were at the time of arrest actually residing in the United States.)

As is pointed out, at page 13 in the appellants' brief in opposition to the motion to vacate orders for bail and to dismiss or affirm appeals, there are no disputed questions of fact which this Court is asked to review. The appellants come to this Court purely upon questions of law, including, among other questions, errors in the determination of questions of law presented on the facts. Despite the assertion of the learned Solicitor-General, at page 7 in his brief on the motion to dismiss or affirm, it is respectfully urged that the questions here are entirely new—have never been determined by this Court.

As to the questions presented for review, reference is again respectfully made to the statement thereof, contained on pages 7, 8, 9 and 10 of appellants' brief in opposition to the motion to dismiss, &c.

Before entering upon a review of the facts in these cases, the Court's attention is asked to the review of the situation—the "history of the times"—under which these arrests were made, on page 4 of the appellants' brief in opposition to the said motion.

While not approving in full measure, the introduction of this not strictly relevant matter, the appellants believe, that its presentation to the Court is, amply justified at least as an answer to the argument of the learned Solicitor-General, both in his brief on the motion to dismiss or affirm and his reply brief on matters which should be directed to the legislative motion rather than

to the judicial department of the government. It is as well to call the attention of the Court to the fact that some of the Government officials charged with the enforcement of these laws are not wholly without sin,—that the Chinese have not a monopoly thereof.

Facts.

These Cases may be Divided into Three Groups.

I.—Those where the status of merchant, during the registration period fixed by the Acts of 1892 and 1893, was claimed. (Including the cases of Ah How, alias Louie Ah How, No. 307; Tom Hong, alias Hom Poe, No. 310; Tom Dock, alias Hom Dock, 311; and Lee Kit, 313).

II.—Those where American citizenship was claimed. (Including cases of Chu Do, alias Chu Gee, No. 308, and Lew Guey, No. 309); and

III.—One case where the status of laborer, during the registration period was admitted, but where it was claimed that by reason of illness during that period the defendant was unable to procure a certificate. (Yung Lee, No. 312).

The Merchant Cases.

Three of these cases, Tom Hong, alias Hom Poe, No. 310; Tom Dock, alias Hom Dock No. 311 and Lee Kit, No. 313, present substantially the same facts. They were copartners with others in the Chinese groceries business, at 15 Doyer Street, in the City of New York, as members of the firm of Kwong Yen Ti Company, from the years 1891 to 1895, inclusive when the business closed up (fols. 13, 17 & 18, Tom Dock record). Tom Dock has been in the United States for over thirty years. Tom Hong has been in the United States about twenty years, over ten years of which was spent in New York (fol. 13, Tom Hong record). Tom Hong and Tom

Dock were arrested at the same place, No. 510 Myrtle Avenue and the third, Lee Kit, was arrested a block away on Myrtle Avenue.

The witness Feldman, who testified in all three cases was the agent of the premises No. 15 Doyer Street. He swore that he saw the defendant Tom Dock sign the lease (fol. 31, Tom Dock record). That he collected rents from each of the defendants; that he saw each of them selling and receiving goods and shipping goods. He was introduced to each of the defendants as partners at the time they entered into possession of the premises and he was shown the copartnership articles (fol. 46, Tom Dock record). The occasion of their telling him that they were copartners and showing him the copartnership articles was when he went to collect the first rent and he was told because of the fact that he was the collector of the landlord (fols. 15-16, Lee Kit record).

The witness O'Brien, an expressman, who also testified in each case stated that he went to the place of business of the Kwong Yen Ti Company twice a day regularly, bringing goods from there and taking goods there. That he saw each of the defendants selling goods. That he received money from each of the defendants for the goods that he delivered (fol. 23, Lee Kit record; fol. 21, Tom Hong record; fol. 32, Tom Dock record).

There was no dispute whatever as to the fact that these men were engaged in business at that time. In fact the Commissioner expressly so held, saying in his opinion:

> "The proofs furnished in these cases are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894" (Tom Hong record, page 17; Lee Kit record, page 18; Tom Dock record, page 30).

The Commissioners' findings on the facts were clearly justified.

That the Government recognized the importance of the Commissioner's findings in this regard is manifested

by the fact that they vigorously opposed the inclusion of these findings in the record, it necessitating an application to the District Court for an order directing the Clerk of the Court to annex the opinion of the Commissioner to the record of the appeal, which motion was duly granted after opposition (fol. 76, Tom Dock record; fol. 44 Tom Hong record; fol. 50 Lee Kit record).

In the Ah How, alias Louie Ah How case, No. 307, the judgment of the Commissioner is clearly erroneous. He states in the recital that the said Ah How, "by his counsel, claimed to have been born in the United States and to be lawfully entitled and to be and to remain therein," and he expressly found and states in the said judgment that the said Ah How was not born in the United States (fol. 4, Ah How Record). No such claim was made by counsel or by the defendant, nor was any testimony to support such claim offered. This is clearly a case where the offense charged was not proven and the offense proven was not charged.

The claim made for this defendant was that his status was that of a merchant during the registration period. The testimony supporting this claim was offered by the defendant and by the same witness, who the Commissioner declared was a credible white witness in the Yung Lee case. (See fol. 51, Yung Lee Record.) This witness testified to an acquaintance with the defendant of upwards of twelve years (page 7, Ah How Record). Saw him handling goods about twelve years before at Number 34 Mott Street, New York City, and saw him engaged in that same place and in the same business for three years after that, and heard him say that he was a partner.

In all of these cases the only proof offered by the Government consisted of testimony to the effect that each of these defendants was found working in a laundry in Brooklyn on July 24th, 1893, and failed to produce a certificate when one was demanded.

In the case of Chu Dow, No. 308, the Government proved merely that on the 23rd day of July, 1902, the defendant was found working in a laundry at 137½ Duffield Street, Brooklyn, and that he failed to produce a registration certificate when its production was demanded by the Chinese Inspector, whereupon the defendant was placed under arrest (fols. 12-17, Chu Dow Record). The Government then rested. The defendant showed that his father had been taken sick; that he had been in the office of defendant's counsel the day before the hearing (fol. 20), and that an affidavit from the father was offered (fol. 21) as the basis for asking for an adjournment. That at the adjourned day an uncle of the defendant appeared; he testified that the defendant was born twenty-six years before at 947 Sacramento Street, San Francisco, and that he, the uncle, saw him there at that time; the uncle then being a resident of San Francisco (fol. 24). On cross-examination the witness showed he was a merchant and a member of a firm engaged in the grocery business at No. 4 Pell Street, in the City of New York. He outlined his whole career while in the United States.

The Lew Guey case, No. 309. In this case the Government proved that the defendant was arrested on July 23rd, 1902, while working as a laundryman at 192 Myrtle Avenue, Brooklyn; that defendant produced a certificate (fol. 9), signed by Felix W. McGettrick, a United States Commissioner, showing that on a hearing before him it had been adjudged by him that the said Lew Guey had a lawful right to remain in the United States by reason of being a citizen thereof. Notwithstanding the production of this certificate the defendant was taken into custody (fol. 9).

The defendant testified that he was born twenty years before in San Francisco, California (fol. 13); that he lived in Richford, Vermont, in 1897; that he had a hearing before United States Commissioner there. That after the hearing the paper (certificate of Commissioner McGettrick) was handed to his father, who

handed it to him. That he has been in New York ever since (fol. 15). That his father had died about two years before. That on returning to the United States, in 1897, after having been in China, he came through Canada to Richford, Vermont, alone, and was tried there and discharged and allowed to come on to New York (fol. 17). He described the judge before whom he was tried. Said that his father appeared as a witness (fol. 18). The certificate was admitted in evidence to prove the fact of a hearing before Mr. McGettrick (fol. 26). It was excluded as a record of a judgment by a United States Commissioner finding that Lew Guey was a citizen of the United States.

> "Mr. McManus: I further offer this certificate as a record of a judgment of the United States Court by a United States Commissioner, finding that Lew Guey is a citizen of the United States.
>
> "Objected to. Objection sustained. Exception" (fol. 27).

The Sick Laborer Case.

Yung Lee, No. 312. The same character of evidence was offered by the Government as to finding the defendant working in a laundry and failing to produce a certificate when its production was demanded. The defendant showed that he had been in the United States twenty-three years. That he was a laundryman during the years 1893 and 1894. That he was ill from rheumatism from November, 1893, to August, 1894. That it kept him to his bed for several months. That he was ill at 158 Forsyth Street, City of New York (fol. 12), during that period. That he could not walk during that period (fol. 14).

A witness whom the Commissioner designated as a credible white witness (fol. 12) testified to knowing the defendant in the City of New York for upwards of twenty-two years. That he knew him for twelve years at 158 Forsyth Street in the City of New York. That he saw the defendant in bed for several months sometime in 1893 (fol. 17).

The Commisioner found that the defendant was a resident of the United States on the 5th of May, 1892, but stated in his decision that it had not been clearly established to his satisfaction that the defendant was unable, through sickness, during *all the time* given by the Statute, to obtain a certificate of residence. The judgment in this case was in the same form as that rendered in the Ah Low case. The Commissioner stated that citizenship claim was made, and adjudges that defendant was not a citizen. No such claim was made.

Not a line of the testimony in any of these cases was controverted by the Government. If the ordinary rules of evidence as to burden of proof were followed in these cases, the Court would have been compelled to discharge each of these defendants.

It is because of the very rule as to burden of proof being on Chinese persons, as required by §3 of act of 1892 that these defendants have appealed to this Court, contending that under the treaty of 1894, and the Act of 1902, the rigor of this rule does not apply to them *as residents of the United States.* Admitting that while as to Chinese laborers seeking entrance to the United States, this statute is still in force, it is urged that Congress intended by the Act of 1902 to release them from this onerous and arbitrary provision.

POINT I.

Section 3 of the Act of 1892, placing the burden of proof on Chinese defendants and section 6 of the same act as amended by the Act of 1893, in so far as it relates to the deportation of Chinese residents of the United States, have all been revoked or superceded by Section 1 of the Act of April 29, 1902, which (in providing for the re-enactment of the Chinese exclusion laws only in so far as the same were not inconsistent with treaty obligations) assures to Chinese persons, *either permanently or temporarily residing in the United States* for the protection of their persons and property, all rights given by the laws of the United States to citizens of the most favored nation (Article 4 of the Treaty of 1894); the sections above mentioned being inconsistent with said treaty provision.

(The argument presented upon this point in some measure is in some respects a *resumé* of the argument presented in Point I of appellants' brief in opposition to the motion to dismiss, etc.).

There is no claim made here that the Government may not exclude Chinese aliens as it may see fit for the protection of, or in the interests of its own subjects, regardless of treaty obligations,—regardless of whether the alien is an immigrant or a resident.

That the Government has this power is too well settled to require citation of authority.

The appellants' contention is briefly this:

Earlier legislation on the subject of Chinese exclusion was concededly in violation of treaty obligations with China. (Chae Chang Ping *v.* U. S. (130 U. S., 581); Lem Moon Sing *v.* U. S. (158 U. S., 538): Fong Yue Ting *v.* U. S. (149 U. S., 697); U. S. *v.* Gue Lim (176 U. S., 459, 464).

Even after judicial expression on this subject, Congress, with "malice aforethought," re-enacted this legislation.

> Acts of May 5th, 1892, and November 3rd, 1893.

But in 1902, the situation had changed; the necessity for these rigorous and despotic measures against Chinese residents of the United States no longer existed and Congress advisedly and with a full knowledge of conditions made the radical change in the character of its re-enactment of the exclusion laws, which the Act of 1902 presents, to wit, re-enactment *only in so far as consistent with treaty obligations.*

The attention of Congress had been drawn to statutory violations of the Treaty of 1894 by Honorable John W. Foster, counsel for the Chinese Minister. The matter of these violations was discussed at some length before the Immigration Committee of the Senate.

> See Senate Document (Rep't, 776, Part 2, Testimony taken before Committee on Immigration on bills before Committee providing for Chinese exclusion, 1902, pp. 44 *et seq.*, & 97).

Hence, this clause in the Act of 1902 was the product of a careful inquiry and investigation into the subject of the invasion of treaty rights of Chinese residents in the United States, and it indicates that hereafter, as to Chinese residents, Congress intended to abide by treaty obligations.

A CONSTRUCTION WHICH SEEKS TO EFFECTUATE TREATY OBLIGATIONS SHOULD BE SOUGHT AFTER RATHER THAN THE CONTRARY.

> "Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry, whether rights secured by such stipulations shall be recognized and protected."
>
> Chew Heong *v.* U. S. (112 U. S., 536).

> "We ought, therefore, to so consider the Act, if it can reasonably be done, so as to further the execution and not to violate the provisions of the treaty."
>
> U. S. *v.* Gue Lim (176 U. S., 459, 465).

The question here is, What did Congress mean by this provision in the Act of 1902? "A reasonable construction such as will effectuate the legislative intention * * * so as to avoid an unjust and absurd conclusion" is what is sought.

In view of the recognition of the binding force of treaty obligations by Congress, a construction which would give effect to both act and treaty must be had.

Whitney *v.* Robinson (124 U. S., 190, 194).

In arriving at a proper construction, the Courts may take into consideration the earlier legislation and the surrounding conditions. The earlier acts were, as is above pointed out clearly in conflict with treaty obligations. But in the enactment of 1902 Congress recognized the force and purpose of clause 4 of the Treaty of 1894, wherein it was agreed that

> "Chinese laborers or Chinese of any other class either permanently or temporarily residing in the

> United States shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nations, excepting the right to become naturalized citizens."

These words have a plain meaning. This Court has only to follow the strict letter of this clause, to give to Section 1 of the Act of 1902 the meaning which the appellants contend for, to wit, that it was intended thereby to give to Chinese residents the rights which all other alien residents had. It follows as a natural sequence that statutes which discriminated against Chinese residents were impliedly repealed.

Section 3 of the Act of 1892 providing that Chinese persons arrested under the provisions of that act or the acts extended shall establish by affirmative proof to the satisfaction of such judge * * * their lawful right to remain here, is a discrimination against Chinese residents. It violates Clause 4 of the treaty of 1894. No other resident aliens are subject to such a burden.

Hence there is a positive repugnance between this provision and a later act which provides in effect that Chinese residents shall not be discriminated against.

Therefore this provision of the Act of 1892 is repealed to the extent of its repugnance, to wit, in so far as requiring Chinese residents of the United States to establish by affirmative proof, their right to remain here.

> See Wood *v.* U. S., 16 Pet., 342, 363.
> U. S. *v.* Tynan, 11 Wall., 88.
> South Carolina *v.* Stoll (17 Wall., 425).

The Courts have drawn a distinction between an alien who remains here and one who has left here and seeks to return. "While he (an alien) lawfully remains here he is entitled to the benefit and guarantees of life, liberty and property secured by the Constitution to all persons of whatever race within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his

absence are as fully protected by the Supreme law of the land as if he were a naturalized citizen of the United States. But when he has voluntarily gone from the country and is beyond its jurisdiction, being an alien, he cannot re-enter the United States in violation of the will of the Government, as expressed in enactments of the law-making power."

Len Moon Sing *v.* U. S. (158 U. S., 547-548).
U. S. *v.* Wong Kim Ark (169 U. S., 700).

What rights are given by the laws of the United States "to citizens of the most favored nations?"

The treaty of 1894, with Japan provides that citizens or subjects of each country shall have free access to the Courts of Justice in pursuit or defense of their rights; they shall be at liberty with native citizens or subjects to chose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts and in all other matters connected with administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects.

"In other words, subjects of Japan stand on an equality in our country with our own citizens."

P. 42 Senate Document above referred to

In the treaty of 1859 with Paraguay, it is provided that

> "The citizens of either of the two contracting parties in the territory of the other shall enjoy full and perfect protection for their persons and property, and *shall have free and open access to the Courts of Justice for the prosecution and defense of their just rights. They shall enjoy, in this respect, the same rights and privileges as native citizens;* and they shall be at liberty to employ, in all causes, the advocates, attorneys, or agents, of whatever description, whom they may think proper."

These are rights which §3, of the Act of ~~1902~~ 1892 denies to Chinese residents of the United States.

Under the act of 1902, in conjunction with the Treaty, Chinese subjects are entitled to the same lawful protection that the subjects of either of these two nations are entitled to and surely a statute which requires them to sustain the burden of proof of their right to remain here after having resided here for years is not in accord with either of the provisions above quoted. These clauses of the Acts of 1892 and 1893 are a discrimination against Chinese residents, alone. As to Chinese persons seeking admission there is no question of the right of Congress to enforce such a provision, but as to Chinese residents of the United States this provision, it is our earnest contention that under the law of 1902, under the Treaty of 1894 with China, and the treaties with Japan and Paraguay above referred to, these clauses are positively repealed. Otherwise the phrase in the act of 1902 means nothing.

This construction, we contend, is reasonable and just. It is not only within the spirit of the Act of ~~1893~~ 1892 and the treaty of 1894 but within the letter thereof. It is a much narrower construction of the act and Treaty, than the construction of Section 6 of the Act of 1884 adopted by this Court in the case of Lan Ou Bew, 144 U. S. 47, where it was held:

> "That although the literal wording of the Statute of 1884, Section 6, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes, *animo revertendi*, yet its true and proper construction did not include his case, and the general terms used in the Act were limited to those persons to whom Congress manifestly intended to employ them, which would be to those who were about to come to the United States for the first time and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning."

Neither is appellant's construction as narrow as that adopted in the Gue Lim case, *supra,* where it was held that:

> "While the literal construction of the Section (Section 6, of 1884) would require a certificate from every Chinese person other than a laborer who should come into the country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate."
>
> U. S. *v.* Gue Lim, 176 U. S., 467.

It is further contended that under the "favored nation" clause as adopted by the Act of 1902, Chinese residents of the United States are now entitled to the same rights and privileges that citizens of the United States have. They shall not be deprived of life, liberty or property without due process of law. They are entitled to the protection which Article 4 of the amendments to the federal constitution guarantees.

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue, but on probable cause supported by oath and describing the place to be searched or the persons or things to be seized."

The effect of this clause in the Act of 1902 is to give renewed force and vigor to the dissenting opinion of Mr. Justice Brewer in the Fong Yue Ting case, where he says:

> "Deportation is a punishment which involves, first, an arrest, a deprival of liberty; and second, a removal from home, from family, from business, from property. * * * It needs no citation of authorities to support the proposition that deportation is punishment. But punishment implies a

> trial. No person shall be deprived of life, liberty or property without due process of law. Due process requires that a man be heard before he is condemned, and both heard and condemned in the due and orderly procedure of a trial, as recognized by the common law from time immemorial."

It was said in this Court, by Mr. Justice Bradley, in defining due process of law in Davidson *v.* New Orleans, 93 N. Y., 97, 107:

> "If found to be suitable or admissible in the special case, it will be adjudged to be due process of law, but if found to be arbitrary, oppressive and unjust, it may be declared to be not due process of law."

Surely under these doctrines, these Chinese residents have been deprived of due process of law; to the protection of which Constitutional guarantee they are now clearly entitled.

> "Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half of their efficacy and leads to a gradual depreciation of the right as if it consisted more in sound than in substance."
>
> Boyd *v.* U. S., 116 U. S., 616, 635.

Mr. Justice Field, in his dissenting opinion in the Fong Yue Ting case, referring to the provision for failure to produce a certificate of residence, required by Section 6 of the Act of 1892 as amended, said, referring to the deportation of Fong Yue Ting, a resident:

> "His deportation is thus imposed for neglect to obtain a certificate of residence, from which he can only escape by showing his inability to secure it from one of the causes named. That is the punishment for his neglect, and that being of an infamous character, can only be imposed after indictment,

> trial and conviction. If applied to a citizen, none of the justices of this court would hesitate a moment to pronounce it illegal. Had the punishment been a fine or anything else than of an infamous character, it might have been imposed without indictment; but not so now; unless we hold that a foreigner from a country at peace with us, though domiciled by the consent of our government, is withdrawn from all the guarantees of due process of law prescribed by the constitution, when charged with an offense to which the grave punishment designated is affixed."

Whether or not this was the effect which the Statute of 1892 had, it would seem to be clear that now Congress was of the opinion that the provisions of the Act of 1892 and 1893, which have never been defended in this Court, as a wise or just or humane measure, were clearly too oppressive as against Chinese residents of the United States, and for that very reason should be repealed.

The provision as to compulsory registration of Chinese laborers residing in the United States (Sect. 6 of the Laws of 1892 as amended by Laws of 1893) is as unfairly discriminating as is Section 3. This notwithstanding the fact that these provisions have been sustained in this Court in the Fong Yue Ting case. Certainly the subjects of no other nation are so discriminated against.

Though by Article V of the treaty of 1894 there seems to be a consent to the enforcement of these registration acts, it appears merely that the Chinese Government did not object to the enforcement of the same in so far as they were designed merely with a view of affording better protection to Chinese laborers in the United States in 1892.

To contend that this clause had any wider scope would be to urge that all of the provisions of that act were acceptable to China including, as well as any other, Section 4 of the Act of 1892, providing for imprisonment of Chinese persons, "convicted and adjudged to be not lawfully in the United States," includ-

ing of course laborers who failed to register, which section was held to be violative of the 4th and 5th Amendment to the Federal Constitution.

Wong Wing *v.* United States, 163 U. S., 227.

Is it not more reasonable to conclude that the registration provisions were approved of only in so far as they were approved of by Mr. Justice Field in the Fong Yue Ting case, where he says, at page 753:

> "The purpose of this section (§6, Act of 1892) was to secure the means of readily identifying the Chinese laborers present in the country and entitled to remain from those who may have clandestinely entered the country in violation of its laws. Those entitled to remain, by having a certificate of their identification, would enable the officers of the Government to readily discover and bring to punishment those not entitled to enter but who are excluded."

And that its sentiments as to the provisions for the deportation of residents were in line with those advanced by Mr. Justice Field in the same opinion?

POINT II.

The objection as to the sufficiency of these complaints is not affected by the decision in the case of Chin Bak Kan, 186 U. S., 193.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at pages 15 and 16.

POINT III.

Neither the Act of 1892, nor the Act of 1893 amending it, required that Chinese persons who were merchants or who "were engaged in business rather than manual labor" should procure certificates of residence during the period when the registration provisions were in force.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at pages 16, 17, 18, 19 and 20.

POINT IV.

The doctrine enunciated in the case of U. S. v. Gue Lim et al, (176 U. S., 462), (as to wives and children of merchants not being called upon to produce certificates), should be followed in the cases of Chu Do (No. 308) and Lew Guey (No. 309), who were children at the period when the registration provisions as to laborers were in force.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at page 21.

POINT V.

In the Yung Lee case (No 312) the Commissioner erred in not discharging the defendant and in not ordering that a certificate of residence be issued to him.

Upon this point the Court's attention is respectfully referred to in the argument in the brief in opposition to the motion to dismiss, etc., at page 22.

POINT VI.

Commissioner McGettrick had power to determine the question of citizenship (Chin Bak Kan v. U. S., 186 U. S. 193), and no statutory form of certificate or judgment being prescribed, the certificate delivered by the commissioner to the defendant Lew Guey (case No. 309) should have been admitted as an adjudication of his citizenship.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at page 23.

POINT VII.

Upon the right to appeal.

The right to appeal in these cases was conceded by the Government in the Chin Bak Kan case (186 U. S., 193), and was so held by this Court.

The appeals involve the determination of treaty and constitutional questions, and under 26 U. S., Stat., §5, as amended, a direct appeal to this Court is permitted.

In the Lee Yen Tai case (185 U. S.), the appeal was taken to this Court by the Government and it is not unreasonable to urge that this fact should operate as an estoppel of the Government's claim that Chinese appellants should not be permitted to appeal to this Court for the redress of what they believe to be grievous errors.

In the case of U. S. *v.* Gue Lim, 176 U. S., 459, the appeal to this Court was also taken by the Government.

POINT VIII.

The orders appealed from should be reversed and the defendants discharged.

Respectfully submitted,

FRANK S. BLACK,
TERENCE J. McMANUS,
RUSSELL H. LANDALE,
Counsel for Appellants.

FILE COPY.

2728
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JAMES H. McKENNE

In the

United States Supreme Court

AH HOW, *alias* LOUIE AH HOW,
Appellant,

vs.

THE UNITED STATES *et al.*, to and Including 313.

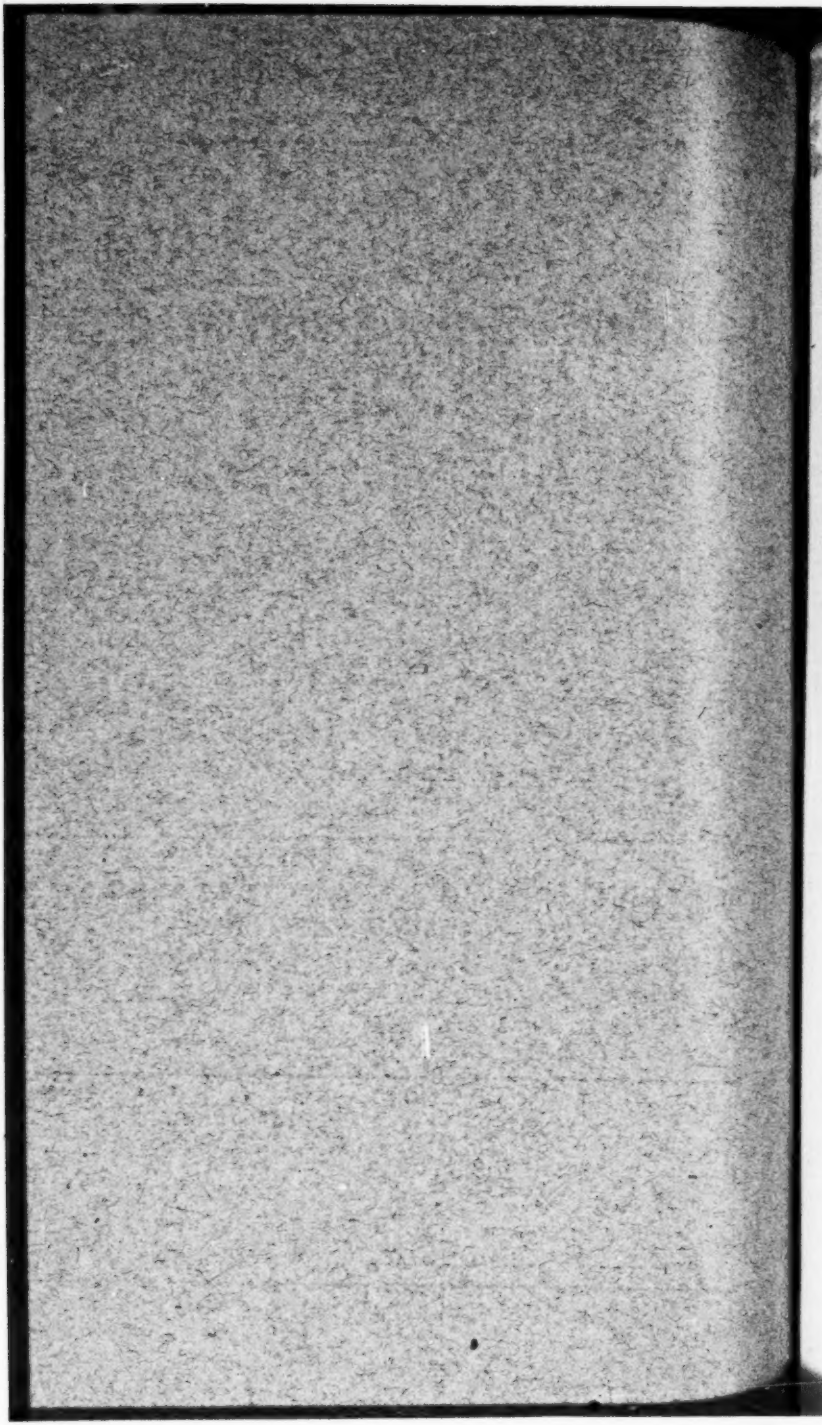
Nos. 307 to 313.

MOTION FOR LEAVE TO FILE ACCOMPANYING

BRIEF IN AID OF APPELLANTS ON BEHALF OF THE CHINESE CHARITABLE AND BENEVOLENT ASSOCIATION OF NEW YORK.

MAX J. KOHLER,
Of Counsel.

STILLMAN APPELLATE PRINTING CO., 26-28 Vesey Street



27239

In the Supreme Court of the United States,

OCTOBER TERM, 1903.

AH HOW, alias LOUIE AH HOW, Appellant, against UNITED STATES. *Et al.*, to and including 313.	Nos. 307 to 313.

Motion for leave to file brief in favor of Appellants on behalf of the Chinese Charitable and Benevolent Association, a New York corporation.

The Chinese Charitable and Benevolent Society, a corporation organized and incorporated under the laws of the State of New York in 1890, for charitable and benevolent purposes, and owning real estate within the City of New York, by Max J. Kohler, its counsel, presents this application for leave to file the annexed brief on motions to vacate orders admitting to bail and to dismiss and to affirm appeals,

AND REPRESENTS TO THE COURT:

First. That the cases brought up on appeal herein involve a number of serious and extremely

important questions affecting the rights of Chinese persons throughout the United States, including many members of your petitioning corporation.

Second. That the peculiar character of these Chinese Exclusion cases, involving arrests or exclusion of Chinese persons, frequently indigent, commonly far away from their home, and beyond the convenient reach of relatives and friends, as well as of witnesses in their own behalf, has made it desirable for the Chinese persons of the City of New York and its immediate vicinity, by concerted action and mutual aid, to assist each other in the defense of cases arising under the Chinese Exclusion Laws, and accordingly, at or about August 1st, 1903, your petitioning corporation did retain Mr. Max J. Kohler, of the New York bar, and duly admitted to practice before this Court, to defend Chinese persons arrested within or prevented from entering the United States, and residing in or about the vicinity of the City of New York, who are otherwise unprovided with counsel; said contract, however, expressly excepts and reserves from out of its operation, all cases of original entry into the United States of Chinese persons.

Third. That there are numerous cases pending, some involving members of your petitioning corporation, while others less directly, but all likely to be seriously affected by the determination of the important questions raised herein; and that for a further consideration of these questions and their importance, your petitioning corporation begs leave to refer to the accompanying proposed brief, which your petitioning corporation asks leave to submit in aid of the appellants herein.

A copy of these papers has been served on counsel for appellants and respondents, and counsel for

appellants has in writing consented to granting this motion for leave to file, and proposes in his brief to incorporate portions of this brief by reference.

WHEREFORE, your petitioning corporation prays that leave may be granted it to submit and file accompanying brief on said appeals.

And your petitioner will ever pray.

Signed, dated and executed by and on behalf of said Chinese Charitable and Benevolent Society, by direction of its Board of Directors.

November , 1903.

THE CHINESE CHARITABLE AND BENEVOLENT ASSOCIATION,
By,
MAX J. KOHLER,
Its Counsel.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

AH HOW, alias LOUIE AH HOW, Appellant, against UNITED STATES.	Nos. 307 to 313.
Et al. To and including No. 313.	

Brief in aid of Appellants, on behalf of the Chinese Charitable and Benevolent Association of New York.

These appeals raise important questions affecting the rights and liberties of hundreds of Chinese persons within the United States. They involve an attempt, certainly with respect to some of the questions arising, to change the established practice of the Government, to the detriment of Chinese residents of the United States, and it will be observed from the transcripts of record in each case that the proceedings are based wholly and solely on the registration provisions of the act of May 5th, 1892, as amended by the act of November 3d, 1893 (Section 6), which statutes have not directly been before this Court for consideration in any case since the Fong Yue Ting case (149 U. S., 698) was decided. All subsequent cases decided by this Court involved only cases of arrests on or almost

immediately after and in view of entry into the United States, which entry the Government attacked as unlawful.

The present case involves the rights of Chinese persons who are not even claimed to have entered the United States since many years, but the charge against them is that they neglected between the years 1892 and 1894 to register, though required to do so, on the theory that they were then, in those years, Chinese laborers, residing within the United States. As will be more fully argued hereinafter, by the clear language of the statute, only persons who were alien laborers within the United States in 1892 were required to register, and each of the cases here involved (except in No. 312, where sickness was shown as an excuse under the law), strong evidence was presented showing that these defendants were not of the class of persons required to register.

In spite of the efforts of the Solicitor General in his brief on the present motions to reduce each and all of these cases to determinations of mere controverted facts, *the fact is that in not a single case did the Government introduce testimony negativing the evidence offered by the Chinese appellants and their witnesses, and each case was decided on questions of law, the decision being challenged as incorrect on the law, and findings having been made in nearly all the cases in favor of these appellants, on the facts.*

Appeals were taken in each of these cases to this Court, because treaty and constitutional questions were involved, which had been raised both before the Commissioner and before the United States District Court for the Eastern District of New York.

These questions were different than were raised in this Court in the group of cases determined dur-

ing the October (1901) Term, in the cases of U. S. vs. Lee Yen Tai, 185 U. S., 213; U. S. vs. Chin Bak Ken, 186 U. S., 193; Lee Lung vs. Patterson, 186 U. S., 168.

Since those cases were before this Court, Congress passed the law known as the Act of April 29th, 1902 (32 St., p. 176), by which all prior laws concerning coming of Chinese persons to the United States, including certain specified sections of the Act of September 13, 1888, are:

> "hereby re-enacted, extended and continued so far *as the same are not inconsistent with treaty obligations* until otherwise provided by law."

This clause was introduced into the statute after the Hon. John W. Foster, as counsel for His Excellency, the Chinese Minister (as also others), had presented in some detail to the Senate Committee on Immigration, in the course of its investigation of our Chinese Exclusion Laws, a detailed statement in which it was contended that numerous provisions of existing laws and our statutes as a body, were violative of our treaty obligations with China.

The present appeals raise the question, involving the construction of the Treaty of 1894 with China, as to whether or not Article IV of the Treaty between the United States and China of 1894, granting to Chinese persons

> "for the protection of their persons and property, all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens;"

has not superseded Section 3 of the act of May 5th, 1892, concerning burden of proof being on Chinese persons in Exclusion cases, as also the provisions

relied upon by the Government to justify attempted arrests otherwise than on complaint on oath within the purview of Article 4 of the amendments to the Constitution of the United States, reading

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue, but on probable cause supported by oath and describing the place to be searched or the persons or things to be seized."

It is further contended that the specific language of the Act of 1902 has had the effect of subordinating our legislation to this Treaty of 1894, has given the Treaty the force and effect of subsequent legislation, modifying and repealing the statutes in as far as inconsistent, and by affording Chinese persons the rights of the most favored nation for the protection of their persons and property, has repealed so much of our Chinese Exclusion procedure as has been based upon extra-constitutional methods heretofore valid, but inconsistent with the ordinary provisions of the Constitution of the United States, with which the statutes are now required to conform.

The Attorney-General of the United States in a very recent opinion, has recognized that the Act of 1902 has displaced certain prior provisions of our statutes concerning Chinese Exclusion cases. In the opinion of the Honorable Attorney-General, dated December 4, 1902 (24 Opinions, 544, at p. 545), he said:

> "There are other provisions of Section 7 of the Act of 1888, upon which this re-enactment and extension in the Act of 1902 may take effect, and *the later act expressly continued existing laws only so far as the same are not inconsistent with treaty obligations.*"

In addition to these treaty and constitutional questions, this Court has, of course, jurisdiction under the Circuit Court of Appeals Act to review all questions arising in the case, including those not dealing with such constitutional and treaty questions (Horner vs. U. S., 153 U. S., 570, 576; Chappel vs. U. S., 160 U. S., 499, 509; Chin Bak Kan vs. U. S., 186 U. S., 193, 201).

Besides the treaty and constitutional questions just considered, these cases also involve the following questions:

(*a*) The right to proceed against Chinese persons who were immature children when the Geary law was passed, requiring registration, on the theory that they were then "laborers" required to register under that law.

(*b*) The right to ignore a determination by the United States Commissioner, made after taking testimony and hearing both District Attorney and defense, to the effect that a Chinese defendant is a citizen of the United States by birth, when said certificate is introduced as the basis for the claim of *res adjudicata*.

(*c*) The authority to treat persons whom the Commissioner finds to have been "*engaged in business rather than manual labor*," in 1894, but "who do not show a real interest of each in the business *as partners*," as "laborers" required to register under the Geary law.

(*d*) The right to order the deportation of a Chinese laborer found by the Commissioner, by competent white testimony, to have been a resident of the United States at the time the Registration law was passed, and to have been sick during a portion of the period given to register by that law, on the mere theory that he might, during some portion of

the time given by the statute, have registered, and this notwithstanding the express exception incorporated in the Act of 1893 concerning such disability.

(*e*) The right to proceed under the present statutory enactments and treaty provisions upon such imperfect and inadequate complaints as are here involved in alleged non-registration cases.

(*f*) The right to institute these proceedings after the lapse of the period provided by the Statute of Limitations (Sec. 1047, Rev. St.), which, it is claimed, bars the proceeding.

(*g*) The right to bail pending appeals from the United States Commissioner, or higher appellate courts, in the cases of persons arrested within the United States in judicial proceedings, which question is brought up by the first branch of the Government's motions.

These separate questions will be presently considered *seriatim*.

Before entering, however, upon them it is proper, on behalf of appellants, to accept the invitation of the Solicitor General to go into some of the "history of the times" in connection with those cases, and ask the Court to take judicial notice of certain facts.

The Government makes some entirely unauthorized and unjustified attacks on Commissioner McGettrick's certificates, which will be presently considered, but in what we shall proceed to say, we shall avoid any such sweeping and unfounded generalizations, unfounded in fact, but will confine ourselves to some recent investigations made by officers of the Treasury Department of the United States in connection with these very cases, and upon which Government report, now on file in the

Treasury Department, Chinese Inspector Izard, who caused the present arrests, was removed after hearing, and his deputy, Jenkins, was transferred to the West.

While there have been many arrests from time to time in Chinese Exclusion cases, during the past five years, in cases of persons who were arrested on or upon view of entry, no wholesale arrests took place in this vicinity, until about a year ago, when Chinese Inspector Izard directed such proceedings in Boston, though he met with but little success there, because the Court (Lowell, J., writing) overruled his contentions on the law.

In re Chin Ark Wing, 115 F. R., 412.

Next followed wholesale arrests in Brooklyn, including these seven cases now here on appeal, the arrests taking place a day before the complaints were verified on July 29th, 1902.

Soon after, some twenty odd cases were instituted by these same officers, Jenkins and Izard, in the Southern District of New York, where, however, U. S. Commissioner Hitchcock discharged all the defendants, because he found that there had been a gross abuse of the process of the Court, in that Inspector Jenkins secured the warrant through false evidence under oath and made incorrect statements to the District Attorney, and himself, thus working a fraud upon the Court in obtaining these warrants. Investigations ordered at the instance of the Treasury Department into these New York and Brooklyn cases established the fact that these Inspectors had been instituting these proceedings in connection with attempts to force the sale of forged and bogus Commissioner's certificates of discharge to Chinese residents, and in pursuance of this scheme, caused the arrest of persons who

would not comply with these demands, and further, endeavored to bribe certain executive officials to aid in these nefarious schemes, and sought to intimidate United States Commissioners and other officers, in carrying out these purposes. Enough of these facts appeared in the public prints to make these matters part of the history of the times, which this Court may take judicial notice of. If the Court be not satisfied with such information, we submit that, on application to the Treasury Department, the detailed reports attesting all these facts, can be had.

So much for the effort on the part of the Government to dispose of these cases on unfounded charges as to fraud and bad faith, not appearing in the record. We, on the contrary, refer to these circumstances as showing to what demoralizing lengths these Chinese Exclusion cases can be carried, if the treaty and statutory safeguards restraining executive action in connection with them, be not given their requisite force and effect.

Before entering upon the consideration of the law propositions and the particular facts in each case presenting them, it is but proper to note the fact that in the case of Chu Do (No. 308), referred to on page 4 of the Solicitor General's brief, the statement that it was asserted that the father would be produced, "but finally the alternative 'uncle' appeared," simply ignores the fact (fol. 20) that the father of the appellant was taken sick on November 11th, 1902, and that on the adjourned day an affidavit from him was offered and an application made for an adjournment of the cause until he would be well enough to testify, and it is in view of this illness that defendant's 'uncle' instead of his father, was produced on November 21, 1902 (fol. 23).

Similarly as to the criticism concerning some

admissions made in the Tom Hung record (No. 310), page 9, the Solicitor-General ignores the fact, which explains the circumstance that the District Attorney and the defense conceded certain facts which two witnesses would testify to, for the reason that this defendant was one of several partners of the firm of Kwong Ten Ti & Co., to which the defendant, whose case had been tried just before, Tom Dock, (case No. 311), belonged, and that the two witnesses had been fully questioned as to such firm, when examined and cross-examined concerning such other defendant, just previously. In fact, instead of rejecting their testimony the Commissioner accepted their statements, as shown by his opinions and conclusion in his findings that these three persons were engaged "in business rather than in manual labor in 1894," but he decided against them, because he was of the erroneous belief that all non-merchants were "laborers," required to register.

The Government brief suggests that it is improbable that so many of these defendants, now laborers, should have been formerly merchants, or be exempt from registration on the plea of being citizens of the United States by birth.

Upon consideration of this claim, however, it becomes apparent that there is nothing improbable about it. On the contrary, the improbability arises from the contention that there should be so many alleged Chinese persons now in the United States who were laborers in 1892 and neglected to register within the months prescribed by the mandatory Act of 1893, called the "McCreary Law." The matter of registration involved little, if any, hardship; it was only the procedure for alleged non-registration which was harsh and oppressive.

After the Chinese residents had, generally, re-

frained from registering under the original Geary law, under advice of distinguished counsel to the effect that it was unconstitutional, the Government received the hearty co-operation of all Chinese officials throughout the United States in its efforts to have all Chinese laborers register within the extended period of six months running from November, 1893. Moreover, nearly ten years have elapsed since this statute was adopted, and it is wholly unreasonable to suppose that any considerable portion of Chinese persons who were laborers, residing within the United States in 1892, have all these years escaped the vigilance of the Government officials.

Examining the argument more closely, however, we find that there is nothing improbable, as claimed by the Government, either in the merchant's claim, nor in the citizenship claim.

Taking up, first, *the merchant's claim*, it is apparent, that, besides the usual changes of occupation incident among all classes of persons, the effect of the Chinese Exclusion Laws has been to reduce many merchants to the status of laborers, and largely stifled Chinese commerce in the United States.

As against the Government's assertions to the contrary, unsupported by evidence in this record, the Court may properly be asked to take judicial notice of the facts stated by Ho Yow, the Chinese Consul General at San Francisco, in an able article in the *North American Review* of September, 1901, in which, while pointing out the large number of deserted mercantile establishments found in recent years in San Francisco as compared to the situation prior to the Exclusion Laws commencing with 1882, he adds:

> "The gala days of San Francisco life and happiness were during the years that preceded

> 1880. The passage of the Exclusion Laws operated as a cone over a lighted candle. Chinese residents in California withdrew from industry, reduced their property to coin and with it returned to China, scrambling out of a country which they deemed inhospitable and unsafe. Business dried up. Trade with China which had been advancing at the rate of a million a year fell over seven million dollars in two years. It never revived until Dewey's victory. During the interim, San Francisco lost $200,000,000.00 of business in her trade with China alone."

It requires no argument to show how difficult it is for Chinese merchants returning to this country without great hardship and risk to establish the facts required by the Act of 1893, so that they, particularly, have been affected by our Exclusion Laws.

Concerning the *claim of citizenship* of Chinese persons because of birth within the United States, on the part of Chinese men claiming to be returning to the United States on reaching maturity, after a number of years of absence from the United States, Government official statistics as distinguished from rash, unscientific and unfounded assertion, lend, in the strongest way, support to this fact.

While the census shows that there were 105,465 Chinese persons in the United States in 1880 (75,132 in California), the census of 1900 show that there were then 106,000 in spite of all migration and natural increase, while by 1900 the number had fallen to 93,000. That the number included many women, particularly in California, has been repeatedly shown in the course of judicial proceedings.

Of course, children were born to them, particularly in California, who, under the Wong Kim Ark case (169 U. S.) are citizens of the United States.

The Government published a table of figures (Senate Executive Document No. 54 of the 52d Congress, 2d Session), prepared by the Collector of Customs of San Francisco, showing that at that port alone 32,090 more Chinese persons had departed from the United States from 1882 to 1891 than had arrived.

The right of return of numerous Chinese adults had been cut off by our Exclusion Laws. With respect to laborers, it was absolutely cut off by the Act of October 1st, 1888, and the Treaty of 1894 merely authorized registered laborers leaving thereafter to return to the United States under certain conditions. With respect to non-laborers, it would be impossible to compute the thousands that have been barred out by erroneous executive rulings, many hundreds being involved by the ruling set aside by this Court in the Lau Ow Bew case, in 144 U. S. Similar were the effects of the decision in the Gue Lim case in 176 U. S., 459. The result is, that many Chinese minors living with their parents were prevented from returning to the land of their birth because of their parents' inability to return, though when they became self-supporting, they were able to return themselves, and do so by advancing their claim of citizenship.

As to this claim of citizenship, the language of Judge WHEELER in U. S. vs. Yee Mun Sang, 93 F. R., 365, is directly in point and correct:

> "The testimony as to his place of birth is not preposterous and unnatural and cannot properly be rejected, although it cannot be contradicted if not true. It must be weighed as lawful evidence in any case must be. When so weighed it appears to prove the facts."

See, accordingly, U. S. vs. Jue Wy, 103 F. R., 795, and two recent determinations of the Circuit

Court of Appeals in the Ninth and Second Circuits, respectively, reported as U. S. vs. Lee Seick, 100 F. R., 398, and U. S. vs. Ham Toy, 120 F. R., 1022 (no opinion), both of which involve this question.

The opinion in the Lee Seick case is particularly important, because it refutes a claim so frequently made by the Government, frequently successfully, as in the cases involved on the present appeal, to the effect that the rule requiring testimony other than Chinese persons' concerning these questions is to be indefinitely extended beyond the statutory rule, so as to involve a rejection of all Chinese testimony on the unfounded theory that it is all incredible.

Some other remarks are made concerning the number of appeals in these cases taken to this Court, as indicating their frivolous character, and that they were taken simply for delay. This overlooks the fact that the Lee Yen Tai case came before this Court after a decision in favor of defendant by Judge Brown, on a certificate from the United States Circuit Court of Appeals for the Second Circuit; that with respect to the other cases in which the present counsel was interested, he specifically consented to the Government's motion to advance the three cases which were heard by this Court; they being advanced because it was deemed probable that their determination would decide the other cases. That these appeals can scarcely be regarded as frivolous would seem to appear from the fact that two justices of this Court dissented. Of course, as is elsewhere more fully indicated herein, the questions now involved are new and different questions than were raised on these other appeals.

POINT I.

These appeals are authorized by statute, and bail during their pendency is authorized and proper.

(1) *These appeals are duly authorized by law.*

That appeals from the determinations of United States Commissioners in Chinese Exclusion cases to the District Court are authorized, by Section 13 of the Act of 1888, was not only expressly conceded by the Government in this Court in the case of Chin Bak Kan vs. U. S., 186 U. S., 193, 201, but it was so held by this Court. Any doubt concerning the question which may have existed when the Chin Bak Kan case was decided, has been since removed by the express specific enactment or re-enactment of this Section 13 of the Act of September, 1888, in the Act of 1902, above considered.

The precise point was determined in the case of U. S. vs. Gee Lee, 50 F. R., 271 (C. C. A., 9th Circuit), and the practice has been widely followed since (see U. S. vs. Lee Seick, 100 F. R., C. C. A., 9th Circuit).

U. S. vs Pin Kwan, 100 F. R., 609 (2d Circuit).
U. S. vs. Ham Toy, 120 F. R., 1022.
Wong Wing vs. U. S., 163 U. S., 228, 269.
U. S. vs. Mrs. Gue Lim, 176 U. S., 459.

The case of Chow Loy vs. U. S., 112 F. R., 354 (Circuit Court of Appeals, 1st Circuit) was decided prior to the decision of this Court in Chin Bak Kan vs. U. S., and is directly inconsistent therewith, and the language therein quoted at pp. 558-9, from the case of Fong Yue Ting vs. U. S., 149 U. S., is the

very language invoked by present counsel in the Chin Bak Kan case in support of the view that the word "Judge" in Section 6 of the Act of 1892 and 1893—the registration provision—was to be construed in accordance with its literal terms and did not include "Commissioner" on the one hand, or "Court" on the other, but this very contention was overruled by this Court in Chin Bak Kan vs. U. S., at pages 199 to 202. With the knowledge that appeals were being entertained by the Circuit Courts of Appeals in the various circuits and by this Court from the decisions on appeal rendered by the United States District Court in Chinese Exclusion cases, Congress expressly and in terms enacted Section 13 of the Act of September 13, 1888, to remove any possible doubt upon the question and to safeguard the right of appeal. The contention of the Government, I submit, that there is no right of appeal from the District Court, is untenable.

The reason why these appeals have been brought direct to this Court, instead of taking the more frequent course of being carried to the Circuit Court of Appeals, is that they involve treaty and constitutional questions, as has already been noted, and this Court, accordingly, has authority to determine all the questions in the case under a long line of authority.

(2) *The right to bail, pending appeals, is sustained by the prevailing practice and is founded on authority, and prior efforts on the part of the Government to vacate orders for bail in such cases have failed.*

Before the Act of 1892 was passed, bail was freely allowed in these cases, being covered by statute and rules applicable, whether the cases be regarded as civil or criminal. If express statutory

authority for bail be needed, it is to be found in the General Provisions of R. S., 716, as to authority to issue all necessary writs and process, (Hudson vs. Parker, 156 U. S., 277), and the more specific provisions of R. S., Sec. 945, authorizing bail in civil cases, and Sections 1014 and 1015 and Rule 36 of the Rules of this Court applying to criminal cases.

In *habeas corpus* cases it is covered by specific special provision, R. S., 765, and rules of this Court (Rule No. 34). Moreover, the eighth amendment of the Constitution of the United States is general in its application, and provides that excessive bail shall not be required. Accordingly in Chinese Exclusion cases, right to bail pending hearings was freely exercised before the Acts of 1892 and 1893 were pased.

> Case of Unused Tag, 21 F. R., 701, 706.
> *In re* Chow Goo Pooi, 25 F. R., 77 (Sawyer, Hoffman, Sabin, JJ.)
> Case of Chinese Wife, 21 F. R., 808, 810.

The general rule, even as applied to criminal cases, is laid down by this Court in Hudson vs. Parker, 156 U. S., 277, 285, as follows:

> "The statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction and pending a writ of error."

The provisions in the Acts of 1892 and 1893, to be presently further considered, have no application to this case, and the right to bail has been freely exercised since their enactment. The right

was specifically recognized by Judge Addison Brown in the United States District Court for the Southern District of New York on May 3rd, 1901, in the unreported case of U. S. vs. Du Shen Tau, *et al.*, reading as follows:

> "Upon an allowance of appeal in the above matter the Court directed that the Chinamen be admitted to bail in the sum of $500 each, and a motion has been made on the part of the Government to vacate the allowance of bail on the ground that by Section 2 of the Act of November 3d, 1893, 28 Stat. at L., p. 7, it is provided:
>
> 'That pending the execution of the order of deportation such Chinese persons * * * shall not be admitted to bail.'
>
> The uniform practice in many cases in this District since the passage of the Act of 1893, has been to admit to bail during the pendency of an appeal. Most of the Judges of this circuit have made such orders, as I have done frequently. The provision above referred to has not been supposed to affect the authority of the Court or the ordinary practice of the Court during appeals, to admit to bail, and so far as I know, this right has not been previously questioned. I am informed by counsel that the question is now pending before the Circuit Court of Appeals in this District. I have examined with some care the brief submitted by the defendants, and am of the opinion that there is reasonable question whether the above provision of the Act of 1893 was designed to affect or does in fact affect the right to admit to bail pending an appeal. Considering that the question is now pending in the Court of Appeals, and probably will be shortly determined, and in view of the general practice previously to admit to bail, I think it is better to adhere to that practice until the decision is made by the Court of Appeals."

Mr. Justice PECKHAM in the group of cases reported as Chin Bak Kan vs. U. S., with knowledge of the controversy and after examining Judge BROWN'S opinion, concluded to follow it, and allowed bail.

At the time the opinion of Judge Brown was handed down, there were pending two cases in the Circuit Court of Appeals for the Second Circuit, in which the Government moved to vacate orders for bail, but the applications were denied in each case, though on technical grounds.

U. S. vs. Lee Yen Tai, 108 F. R., 950.
U. S. vs. Moy Yee Tai, 109 F. R., 1.

Subsequent to this, the Government made motions to vacate Mr. Justice PECKHAM'S order for bail in the cases of Chin Bak Ken and Chin Ying vs. U. S., 186 U. S., but this Court did not determine those motions.

Since then bail has been allowed in various cases, to the personal knowledge of counsel, by Mr. Justice PECKHAM, Judge WHEELER and Judge THOMAS.

Two provisions are referred to as limiting the power to bail, Section 5 of the Act of 1892 (2 Supp. R. S., 13) and Section 2 of the Act of November 3d, 1893 (2 Supp. R. S., 154).

(3) *The prohibition of Section 5 of the Act of 1892 upon bail on habeas corpus cases applies only to cases where entry to the United States is sought to be had by means of a writ of habeas, and by its terms has no application to a case where, like here, arrest took place within the United States.*

This section is involved in the case of *In re* Chin Yuen Sing, 65 F. R., 788, in which Judge Lacombe held, with respect to a case where entry was sought

into the United States through a writ of *habeas corpus, without even awaiting a determination by executive officials*, that as he was prohibited from taking bail before the appeal, his discretion ought not to be exercised in favor of bail upon appeal. In fact, however, Judge Lacombe subsequently in that very case allowed bail on the appeal to this Court, determining the question of power in favor of the exercise thereof, as well as that of discretion, though the appeal was subsequently dismissed.

Chin Yuen Sing vs. Kilbreth, 163 U. S., 680.

This view is in line with that taken by this Court in Hudson vs. Parker, *supra*, and in the Wong Kim Ark case, 169 U. S., 659, where, under similar conditions, bail was taken.

It is submitted, first, that this statute refers only to cases in which application is made for entry into the country through *habeas corpus, in the first instance*, and in advance of the decision by the Immigration officials, whose determinations were made binding upon the Courts only in the subsequent act of 1894; and, second, that this statute has no applicability to appeals concerning which, in *habeas* cases, the statute and the rules already considered had made ample provision. In either event, however, this statute has no application to the present case, in which defendants were arrested long after they had been peacefully residing within the United States, and they are not seeking entry into the United States through a writ of habeas corpus.

(4) *The provision in Section 2 of the Act of 1893 has no application to this case, inasmuch as this is an appeal.*

This statute relied upon by the Government and printed in its brief herein reads as follows, it being found in the second subdivision of Section 6 as amended by the Act of November 3d, 1893:

> "Such order of deportation shall be executed by the United States Marshal of the district within which such order is made and he shall execute the same with all convenient dispatch; *and pending the execution of such order* such Chinese person shall remain in the custody of the United States Marshal and shall not be admitted to bail."

It would be difficult to find any language less apt to express an intention to forbid bail pending appeal than the language relied upon here by the Government "*pending the execution of such order.*"

The Attorney General, in an opinion reported as 22 Opinions, 340, points out that even if appeals do not vacate entirely the orders for deportation—particularly in cases where the District Court on appeal may conduct a new trial *de novo*,

> U. S. vs. Lee Seick, 100 F. R., 398 (C. C. A., Mr. Justice McKenna, sitting).—

they, at any rate, *suspend* the orders, so that the language, "pending the execution of such order," is not an apt reference to appeals. In fact, however, it is clear that no such purpose was in the mind of Congress in enacting this statute, as to curtail the right to bail on appeal. The fact is that so many thousands of Chinese laborers in the United States, under advice of distinguished counsel, neglected to register under the Geary Law of 1892, believing it to be unconstitutional, that an enormous number of persons were liable to be deported, and there were no adequate funds for executing such orders. Accord-

ingly, Judge LACOMBE, on May 26th, 1893, directed a discharge of Chinese persons whose deportation had been ordered in proceedings not appealed from, they to be re-taken after departmental authority to execute the order was confirmed.

In re Ny Look, 56 F. R., 81.

This practice was in line with the California federal precedents in *habeas corpus* cases already considered.

See Treasury Department action accordingly, Treas., Dec., No. 13996.

The Attorney General joined in this solution of the problems and requested United States Attorneys to ask their judges to make similar orders, which was done everywhere except in one California case.

Congressional Record, 53rd Congress, Vol. 25, Part II, p. 2,444.
U. S. vs. Chum Shang Yuen, 57 F. R., 588.

When Chinese legislation was being considered by Congress at the session at which the Act of 1893 was passed, it called on the Attorney General for the correspondence relative to this decision of Judge Lacombe's, which was furnished on September 23rd, 1893. It was to meet this situation that Congress passed this provision of the Act of November 23rd, 1893, requiring detention in custody and forbidding bail.

Appeals were not under consideration, but only this practice of *discharging and bailing after final unreviewed orders of deportation.* The language of the Act expresses such intention, and is not applicable to appeals.

The General Statutes and rules as to bail on appeal, already referred to hereinbefore, govern bail

pending appeals, and this Act of 1893 nowhere even refers to appeals, does not attempt to deal with that subject nor the disposition of Chinese persons pending appeals, and does not modify the existing system relative to that matter.

The well-settled principle applies that special statutes like those as to appeals are not modified or repealed by subsequent General Statutes, in the absence of language unmistakably indicating that the subject matter of the special statute was within legislative contemplation, as held in *ex parte* Crow Dog, 109 U. S., 556.

Moreover, the construction contended for by the Government would be imputing intention to work gross hardship to Congress, in the matter of requiring imprisonment pending appeals, bound to take up some time, quite inconsistent with its subordination of these statutes by the Act of 1902, to Article 4 of the Treaty of 1894, conferring upon Chinese persons for the protection of their persons and property all the rights of the most favored nation, and besides would be of more than doubtful constitutionality as involving imprisonment as distinguished from mere brief detention, incidental to deportation.

Yick Wo vs. Hopkins, 118 U. S., 356, 368-9.
In re Qwong Wo, 13 F. R., 229, 233; Field, J.
In re Ah Chong, 2 F. R., 733, 737-9.
In re Parrot, 1 F. R., 481, 483, 498.
Wong Wing vs. U. S., 163 U. S., 228.
U. S. vs. Wong Dep Ken, 57 F. R., 206.
In re Lintner, 57 F. R., 587.

(5) *The statute is moreover, by its own terms, limited to "such" orders of deportation.*

When we examine the prior portion of the

statute for the antecedent of the word "such," we find it in the first subdivision of the amended Section 6 of the Act of 1893, concerning order for deportation in non-registration cases.

Under the principle of U. S. vs. Gooding, 12 Wheaton, 460, 477, the act is thus limited, and this was the point under consideration of Congress with respect to enforcement of *unappealed* orders for deportation for non-registration. Moreover, the word "such" in the passage of the statute concerning bail invoked by the Government, corresponds with the language found in the first subdivision of the amended Section 6, reading as follows.

> "be deported from the United States, *as provided in this Act*, and in the Act of which this is an amendment,"

thus referring in deportation cases for non-registering, not only to the provision of the Act of 1892, as to the *country* of deportation, but to the very provision on this subject of deportation here invoked in the Act of 1893. The only provision in the Act of 1893 as to *method* of deportation is this custody and bail provision, which is thus incorporated by express reference into the non-registration provision.

It is submitted that the Act of 1893 in question was not intended, and does not curtail the right to bail pending appeals, and that the language used is not apt to carry out such alleged intention, and that the right to bail continues as prior to said statute, with respect to appeals.

(6) The Government refers to the case of

> Chan Gun vs. U. S., 9 App. Dist. C., 290,

as an authority against the right to bail. In that case, the Court of Appeals of the District of

Columbia did have the question before it (pp. 304–5), in 1896, whether the order for bail pending appeal in a non-registration case, was valid or not, and held that the lower Court erred in admitting to bail. Appellant's counsel did not oppose this contention at all (see his brief, pp. 294–6), none of the arguments herein made and considered were before the appellate court; nor was the Treaty of 1894 anywhere called to the attention of the Court, nor the Act of 1902, nor a single case herein referred to. That case deals only with bail in non-registration cases, but even as applied to these, it is submitted, it is contrary to principle and authority.

POINT II.

The Statutes relied upon by the Government to throw the burden of proof on Chinese defendants (Sec. 3 of the Act of 1892), those alleged to allow arrest otherwise than upon a warrant upon complaints under oath, as distinguished from mere suspicion or even absence of suspicion, and the Acts relied upon as denying bail, are inconsistent with Article IV. of the Treaty with China of 1894, conferring on Chinese persons for the protection of their persons and property all the rights of the most favored nation, particularly by force of Section 1 of the Act of April 29, 1902 (32 St., 176), continuing the statutes only in as far as not inconsistent with Treaty, and are inconsistent with the Constitutional Amendments of the Federal Constitution, to which these Statutes have been subordinated by said Treaty and Act of 1902.

This Court, in several recent cases, while holding that certain of the provisions of the Chinese Exclusion Statutes were inconsistent with Treaty, applied the well settled principle that a later inconsistent statute supersedes an earlier treaty,

> The Chinese Exclusion Cases, 130 U. S., 598,

and said that arguments as to the oppressiveness

of these statutes must be addressed to Congress, not the Courts.

Li Sing vs. U. S., 180 U. S., 486 at 495.

The Treaty of 1894 concededly repealed some provisions of the earlier statutes, such as in any event the Act of October 1st, 1888, forbidding the return under any conditions of Chinese laborers. (21 Opinions, 68), and the place from which certificates were to be secured (21 Op., 347), and provisions as to certificates of disability (23 Op., 545).

Various other provisions were being challenged by China and Chinese persons as unconstitutional, including, among others, two provisions (Sections 6 and 12 of the Act of 1884), which were under consideration by this Court when this Act of April 29th, 1902, was passed. Congress, recognizing that various inconsistencies may have existed, and influenced by the observations of this Court that relief could be had only from Congress, by unmistakable language evinced its desire to keep treaty faith, and to give the Treaty the force of a later enactment, rather than one that might be regarded as superseded by these later Acts. That its action by its use of these suggestive words has had some such effect, is recognized by the opinion of the Attorney-General already quoted (24 Opinions, 544, at 545).

The claim now made by the Government that the contentions herein made were overruled in the cases of Lee Yen Tai vs. U. S., 185 U. S., 213, 222, Chin Bak Kan and Chin Ying vs. U. S., 186 U. S., 193, 200, and Lee Lung vs. Patterson, 186 U. S., 168, 176-7, is clearly fallacious, as will be noticed by an examination of these cases. They involved only the alleged repeal of Sections 6 and 12 of the Act of 1884 by said Treaty. None of the other questions had been presented below as Treaty

questions, and they were not open in this Court and were not argued here, especially as defendant there, without objection, had assumed the burden of proof. It is true that the Chin Bak Kan case (186 U. S., 193), did involve an attack on the burden of proof provision, but that was based on the claim that it was unconstitutional as applied to the determination of the citizenship issue. Moreover, as already pointed out, the Act of 1902 is a new and most important factor, evidencing and effecting a partial repeal of earlier statutes by subordination to treaty.

This Court and the lower Federal Courts have repeatedly given force and effect to such provisions as Article IV of the Treaty with China of 1894, as invalidating statutes and proceedings devoid of ordinary due process of law.

Yick Wo vs. Hopkins, 118 U. S., 356, 368-9.

In re Quong Woo, 13 F. R., 229, 233, FIELD, J.

In re Ah Chong, 2 F. R., 733, 737-9.

In re Parrott, 1 F. R., 481, 483, 498.

Wong Wing vs. U. S., 163 U. S., 223.

In re Lintner, 57 F. R., 587.

Mrs. Gue Lim vs. U. S., 176 U. S., 459, 465.

POINT III.

The Registration Provisions of the Chinese Exclusion Laws (Section 6 of the Act of Nov. 3rd, 1893, superseding Section 6 of the Act of 1892) have been erroneously construed below as having required all persons not now proved to be merchants as defined in the Act, to register as "laborers," as also persons who were minors, residing in the United States in 1892 having no occupation of their own, contrary to a reasonable construction and understanding of these laws, at least as given during the six months following November 3rd, 1893, during which alone registration was permitted.

Of the seven cases here involved, the defendants in Nos. 311 (Tom Dock), 310 (Tom Hong), 313 (Lee Kit) and Ah How (307), defended on the ground that they were non-laborers resident within the United States from 1892 to 1894, and tried to show that they were merchants. I am preserving the order in which they were tried, ignoring for the present No. 308 (Chu Do), whose case was first tried, involving a claim to American Citizenship and No. 309, a man of 26 (Lew Guey), the second tried, now only 20 years old and holding a genuine Commissioner's certificate, evidencing a decision in his favor in 1897, on his claim to American Citizenship, as also No. 312 (Yung Lee), the last of the series to be tried, who defended on the ground that he was too ill to register, and is now entitled to a certificate under the express terms of the statute; Cases Nos. 311, 310, 313 and 307 were tried in that order, after the second case, No. 309, had been tried.

The Alleged Merchant Cases.

In the first three of these alleged merchant cases, the U. S. Commissioner made findings which show precisely what he decided, and absolutely negative the Government's assertion that these cases were decided on any rejection of defendant's or defendant's witnesses' testimony on the facts, and shows that they raise pure questions of law which this Court is now asked to review. Each of the records in Nos. 311, 310 and 313 contains this opinion, which may be found in No. 311, the Tom Dock case, at folios 77-8, and reads as follows:

> "In these three cases it is urged on one side that the decision of the Circuit Court of Appeals of this circuit in the case of the United States vs. Pin Kwan requires the Commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the Court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the Court itself had said it was error to admit, (a certificate being the sole proof admissible), goes merely to show what the Court thought of the evidence in that case which differed from the present one. Admitting the distinction, I do not think the United States Commissioner is at liberty to disregard carefully expressed language of the Circuit Court of Appeals for the circuit, even though a dictum of the court as to the precise question before it. The *proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894*, but not to show a

real interest of each in the business as partners; they do not, to my mind, clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made."

It will be observed that the Commissioner felt constrained to follow the opinion of the Circuit Court of Appeals for the Second Circuit in the case of U. S. vs. Pin Kwan, 100 Fed. Rep., 609, reversing 94 F. R., 824 (Coxe, J.), and he overlooked the distinction between the statutes applicable to entry cases and those governing the registration of laborers, thus assuming that all non-merchants resident in the United States in 1892 were required to register, and of course could not give effect to the circumstance that this Court had previously given expression to its doubts as to the correctness of this Pin Kwan decision, even as applied to entry cases, by granting applications to certiorari that cause (178 U. S., 611), though defendant's indigence in that case led to a dismissal of the cause without decision for non-perfecting of said appeals (U. S. Sup. Ct. Rep., [illegible] 45, Lawyers' Ed., p. 1255).

In Case No. 307 (the Ah How case), the fourth of these alleged merchant cases to be tried, the Commissioner made no findings and wrote no opinion, the questions being the same as in the three just tried, in which his findings have just been considered.

Of course, each of these cases involves only a non-registration charge (see complaint in No. 311, fol. 1, identical with the rest), and each of the defendants is shown to have been continuously a resident of the United States over five years (see *post*, Point VII), all but one continuously for over 20 years, and they were arrested while peace-

ably here, without being even charged with unlawful entry.

The Statute here involved is the Act of Nov. 3rd, 1893, reading as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section six of an act entitled 'An act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two, is hereby amended so as to read as follows:
>
> "SEC. 6. And it *shall be the duty of all Chinese laborers within the limits of the United States* who are entitled to remain in the United States before the passage of the act to which this is an amendment, to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months shall be found within the jurisdiction of the United States without such certificate of residence, **shall** be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States Customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of said United States Judge, and by at least one credible witness, other than Chi-

nese, that he was a resident of the United States on the fifth day of May, eighteen hundred and ninety-two; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the Court; and any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply and receive the same without charge; and that no proceedings for a violation of the provisions of said section six of said act of May fifth, eighteen hundred and ninety-two, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued:

Provided, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

Sec. 2. The words '*laborer*' *or* '*laborers*,' wherever used in this act, or in the act to which this is an amendment, *shall be construed to mean both skilled and unskilled manual laborers*, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: *A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.*

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year was not engaged in the performance of any manual labor, except as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch, and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal and shall not be admitted to bail.

The certificate herein provided for shall contain the photograph of the applicant, together with his name, local residence and occupation and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States collector of internal revenue of the district in which such Chinaman makes application.

Such photograph in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of the Treasury.

Approved November 3d, 1893."

In considering this question in the Pin Kwan case (100 F. R., 609, 610), the Court, by LACOMBE, J., after holding that defendant, an accountant, who had a certificate so reciting under Section 6 of the Act of 1884, but who tried by evidence outside of the exclusive statutory certificate to show that he was a merchant, after being arrested, in view of entry into the United States, held that, even if the certificate did suffice, which the Court denied—the Government might rebut its recitals, and had done so in this case. The Court says as to defendant's own testimony (page 612):

> "He further testified that since his arrival Pin Kwan has lived at the stores of the company, 'attends to the business, keeps the books, and sells goods,' and that 'he has an interest in the stock of goods, and has had ever since he came here.' But what that interest is does not appear. This does not bring him within the definition of a merchant prescribed by the statute. There is nothing to show that he is engaged in both buying and selling and certainly the business is not conducted in his name. The Circuit Court of Appeals in the Ninth Circuit has held that the statute is to be so construed as to eliminate the clause expressly inserted by Congress, 'which business is conducted in his own name,' whenever the interest of the merchant is 'real, and appears in the business and partnership articles in his own name.' Without now expressing an opinion as to the soundness of so much of that decision as applies the doctrine laid down in Church of Holy Trinity vs. U. S., 143 U. S., 457; 12 Sup. Ct., 511; 36 L. Ed., 226, to expunge from a statute words seemingly inserted with careful intention, it is sufficient to say that there is not a scintilla of evidence in the case at bar to show that Pin Kwan has an interest in the Quong Sing Lung Company which is real and

> appears in the business and partnership articles in his own name. The defendant, so far as the proof shows, is in fact but a clerk and bookkeeper, or assistant accountant, in the employ of the company, who sometimes sells its goods and keeps its books. He is not a merchant, but a skilled manual laborer, and as such liable to deportation."

It will be observed that Commissioner Benedict's reference in these cases to a failure to show a "real" interest as co-partner by the firm books and articles is an allusion to the language in this Pin Kwan case, because here also the firm books and articles of this long-dissolved firm were not produced, having been carried away years before the trial by one of the former partners, though it is shown that their names did appear in these partnership articles (No. 311, fols. 17, 18, 40, 45, 46). The other records are similar.

But this Pin Kwan case dealt only with alleged unlawful entry into the United States, being directly concerned with the provisions of Section 6 of the Act of 1894 as to certificates from non-laborers on entry. Under the prevailing view, many persons are excluded from entry without the appropriate certificates, even though they be merchants, while *various classes* of non-laborers are not *entitled to enter*, no matter what certificate they have (Treas. Dec. No. 21600, as to preachers, physicians, etc., and other persons not enumerated in Article III of the Treaty of 1894, and this Pin Kwan decision as to "accountants," compare doubt as to the soundness of this view, in U. S. vs. Mrs. Gue Lim, 176 U. S., 459, 463). The treaty of 1894 *prohibits* immigration of Chinese laborers only (Article I), the third article as to privileged classes not necessarily being an exclusive enumeration, and the principle being well settled that only the prohibition of migration

of laborers is aimed at. (Lan Ow Bew vs. U. S., 144 U. S., 47, 59; U. S. vs. Mrs. Gue Lim, 176 U. S., 459, 467). Obviously, therefore, a person who is excluded from entering is not necessarily a laborer, while only manual "laborers," as defined in the Act of 1893, were required to register. It is accordingly a *non-sequitur* to regard the classes of persons forbidden from entering as the same classes who, as manual "laborers" were required to register. Even if mercantile status, as defined in the statute, be not established, the person is not thereby shown to be a "laborer" required to register. Besides, the provision as to proof of mercantile status by white witnesses applies only to applications for re-entry into the United States on that ground (Li Sing vs. U. S., 180 U. S., 486; U. S. vs. Lee Seick, 100 F. R., 398, C. C. A.).

No other persons have been required to register other than such as were both (*a*) Chinese laborers, and (*b*) resident within the United States in 1892, nor could any person register at any time after six months after November 3d, 1893. (Fong Yue Ting vs. U. S., 149 U. S., 698, 726, *et seq.*; U. S. vs. Sing Lee, 71 F. R., 686; U. S. vs. Tyle, 70 Fed. Rep., 318; *In re* Chin Ark Wing, 115 F. R., 412, Lowell, J.; See Rulings of the Treasury Department itself to that effect, made in December 1897, and published as Treasury Decisions 18666, 18686; compare Art. IV of the Treaty of 1894.)

When Chinese laborers resident in the United States in 1892 were called upon to register by the Act of 1893, regulations to enforce the law were duly promulgated by the Commissioner of Internal Revenue and the Secretary of the Treasury on November 25th, 1893 (Treasury Dec. No. 14542 1-2), which required the laborer to state his occupation in his written application for registration, as also

the witness he produces, and this was also to be stated in the certificate. These regulations provided:

> "The persons referred to in the Acts of Congress to which these regulations apply, and whose immigration into the United States is prohibited, *are limited to Chinese laborers*."

Numerous cases have arisen from time to time in which the courts have given effect to the fact that the Act of 1893 defines both the terms "merchants" and "laborers," and does not state that a non-merchant is to be regarded as a laborer.

In U. S. vs. Mark Ying, 76 F. R., 450, Judge Wheeler, in dealing with a case of a peddler, properly says:

> "The Act of 1893 also defines merchants, and he (defendant), is said not to be a merchant within the definition. But the Act does not declare all not merchants to be laborers, nor otherwise require registration of them. The question is not whether the respondent is a merchant, and so exempt from registration, but whether he is a laborer and so liable to deportation for want of registration. He does not appear to be a laborer within either common understanding or the statutory definition of the term."

In U. S. vs. Chin Fee, 94 F. R., 828, at p. 829, the same judge held that a physician resident here in 1892 was not a laborer required to register as such.

In *In re* Chu Poy, 81 F. R., 826, Judge HAMMOND at pp. 827 to 828, strongly intimates that a merchant's clerk is not a laborer within the meaning of these statutes.

In the case of Wong Fong vs. U. S., 77 F. R., 168 (C. C. A.), the Court held that one conducting a gardening enterprise with Chinese labor in which his

work was supervisory only and in addition was a merchant, is not a laborer within the meaning of the Chinese Exclusion Laws, and here also the question came up again, which the Circuit Court of Appeals in the Second Circuit considered in the Pin Kwan case, as to proof requisite that business was conducted in defendant's name, it being held that the proof that the business was conducted in his name might be supplied indirectly and without production of the partnership articles or accounts, after their loss by fire, a situation almost precisely the same as here involved, which the Commissioner and Court below in these cases decided directly to the contrary. Moreover, the Circuit Court of Appeals in the Pin Kwan case overlooks the fact that the determination of the Circuit Court of Appeals for the Ninth Circuit, in the case of Lee Kan vs. U. S., 62 F. R., 914 (C. C. A.), to the effect that it would suffice if the defendant's name appeared as a partner in the firm books or articles, though the firm name itself was a fancy name, as nearly all Chinese mercantile establishments are conducted under such arbitrary names, has been acquiesced in by the executive officers of the Government ever since (23 Opinions, 485, and Treas. Department Pamphlet Instructions to Collectors and Others, Doc. No. 1849, promulgated April 7, 1896, by the Secretary of the Treasury, No. 22, p. 8): "The practice of officers of this Department will, therefore, conform to the decision of the case of Lee Kan, cited above." Nor has this Court ever disapproved of the opinion of the Attorney General (21 Opinions, 21), that this definition section of the Act of 1893 should not be construed retroactively against persons who were merchants resident in the United States before 1893.

In *In re* Ho King, 14 F. R., 724, the Court held that an actor was not to be regarded as a laborer.

All these cases are in line with the decision of this Court in the case of Laws vs. U. S., 163 U. S., 258, under the contract labor laws, to the effect that a chemist is not to be regarded as a laborer, notwithstanding the enumeration of the excepted classes under the contract labor laws, a decision which was applied and followed by the Circuit Court of Appeals in the Seventh Circuit in the case of U. S. vs. Gay, 95 F. R., 226, with respect to a draper and dry goods clerk. In those statutes, moreover, "laborer" is not limited to "manual" laborers, as in the Chinese Exclusion Acts. Nor have the opinions of the Attorney General on these points been as unreasonable and stringent as the contention now advanced by the Government indicates.

In an opinion handed down May 26th, 1897, reported at 20 Opinions, 602, the Attorney General ruled that a restaurant keeper not himself engaged in manual labor is not to be treated as a laborer, though, subsequently, after some decisions more or less to the contrary in District Courts, he held that a restaurant keeper who himself engaged in manual labor was to be classified as a laborer, but where he had left the United States in reliance upon the former classification, the Government authorities should permit him to re-enter (22 Op., 324).

In 23 Opinions, 485, the Attorney General ruled that one who was a cigar manufacturer as well as a merchant was not forbidden from re-entering, and in an opinion in 24 Opinions, 132, he held that the doctrine of the Lau Ow Bew case, 144 U. S., 47, concerning re-entry without a certificate of domiciled Chinese non-laborers, applies not only

to domiciled merchants, but to all other non-laborers domiciled here, of the classes enumerated in Article III of the Treaty.

In Treasury decision No. 17145, the Secretary of the Treasury, in May, 1896, ruled that a Chinese musician is not a laborer, forbidden to enter.

Moreover, the argument of Judge COXE in the District Court in the Pin Kwan case, 94 F. R., 824, reversed in the Circuit Court of Appeals, surely merits consideration.

It is accordingly submitted that the United States Commissioner in these cases erred in regarding the Pin Kwan decision concerning entry cases as controlling, and its determination that a particular person was not to be regarded as a merchant when proceeded against for unlawful entry, as authority for the proposition that such persons are to be treated as laborers required to register under the Acts of 1892 and 1893, and it is further submitted that persons in the position of these defendants who were, in the language of the Commissioner,

> "*engaged in business rather than in manual labor*"

should not be treated as manual laborers required to register in 1892, *because, long subsequent to that period their firm books and articles have been lost or carried away in consequence of the breaking up of their business, and that they are no longer able to produce those books or articles in order to prove by such primary instead of secondary evidence of their contents, that the business was conducted in their name and by such means that their interest was a real interest as partners.*

The Minor Cases.

The Commissioner further erred in ordering the deportation of two of these defendants, defendant Chu Do (case No. 308), now 26 years of age only, and the appellant, Lew Guey (case No. 309), now only 20 years of age.

The only charge against these men was that of non-registering, and it was never heretofore even contended on behalf of the Government that persons of such tender years as these defendants were in 1892 to 1894, having no occupation of their own, were or could be regarded as "laborers" by occupation, resident within the United States in 1892. It is an attempt to twist language, to treat boys of 9 and 15 years of age, as these defendants were when the Registration Law was first passed, as "laborers." This question seems to be directly contrary to the decision of this Court in the case of Mrs. Gue Lim against U. S., 176 U. S., 459, at pp. 466, 467, 468, decided at the October Term, 1899. That such was the view that prevailed at or about the time of such registration is further apparent also from the decision of the Court in *In re* Tung Yung, 19 F. R., 184, at p. 189, where the Court referred to the production of mercantile certificates by children between the ages of 10 and 15, sons or nephews of resident merchants, as an "absurdity," since they had no occupation of their own. The line of reasoning pursued by this Court in the Gue Lim case is also directly applicable to this question of registration, for here also as already shown by the regulations promulgated under the Act of 1893 (T. D. 14,542½), both the application for registration, the affidavit of the witness and the certificate itself were required to state applicant's "occupation;" this would be meaningless, and therefore inapplicable as to minors having no occupation of their own.

POINT IV.

The Commissioner erred in the Lew Guey case (No. 309) in excluding the certificate of United States Commissioner McGettrick to be found in the record (fol. 9) whose genuineness was admitted (fol. 25) and which was relied upon to show an adjudication made after due hearing on June 26th, 1897, by United States Commissioner McGettrick to the effect that the defendant was a citizen of the United States by birth (fol. 27).

This question is one of very great importance to hundreds of Chinese persons throughout the United States. It has been the practice until now for executive and judicial officers of the Government to treat this certificate as establishing the plea of *res adjudicata* with respect to the citizenship issue, upon proof that the holder of a genuine certificate is the person to whom the certificate was issued. Such practice was recognized in the instructions of the Treasury Department to its subordinates as late as October 30, 1900, in Treasury Decision No. 22,572. It was based upon principle and authority, and yet Commissioner Benedict in these cases refused to receive the certificate in evidence to establish such plea of *res adjudicata* (fol. 27), though its genuineness was conceded (fol. 25). His decision seems to have been based more upon the claim taken up in the brief of the Solicitor General and stated in the record (fol. 13), that it is either a certificate or a judgment, and that if it is a certificate, the Commissioner has no power to issue such paper, and if it is a judgment, it is not properly proved because neither certified nor exemplified.

That United States Commissioners have jurisdiction to determine the citizenship issue has been directly held by this Court in the case of Chin Bak Kan vs. U. S., 185 U. S., 193.

In hearing these cases, Commissioners do not sit merely as committing magistrates, but hear and determine these cases with the same jurisdiction and powers that a Justice of this Court would have, who has no greater power under the statute.

It is difficult to conceive of any reason why these determinations should not have the same force and effect as a basis for the plea of *res adjudicata*, as determinations in any other proceeding.

With respect to similar determinations under the Chinese Exclusion Laws upon *habeas corpus* proceedings, the Circuit Court of Appeals for the Ninth Circuit in the case of U. S. vs. Chung Shee, 76 F. R., 951 (aff'g 71 F. R., 277), has spoken in no uncertain words. The Circuit Court of Appeals said, at page 956:

> "It follows from this view of the effect of the Jung Ah Lung case that the decision of the District Court for the District of Oregon upon the writ of *habeas corpus* was an adjudication of the title of the defendant-in-error to be and remain in the United States, upon the facts which were involved upon the hearing of the writ. It is not claimed that she is amenable to deportation by reason of any fact arising since the date of that adjudication. The questions which were then determined were those which were raised by the petition and the return. In the petition was alleged the petitioner's claim or right to land, and the denial of that right, and her restraint. The judgment shows that upon hearing had she was 'discharged from the detention and restraint complained of in said petition.' It clearly appears that there were re-examined before the Court all the facts and circumstances which came before the collector on his

> original examination. She cannot again be lawfully arrested and held upon the same facts that were in issue in the former proceeding. (1 Freem. Judgm., Sec. 324; *Ex parte* Jilz, 64 Mo., 205; Yates' Case, 6 Johns, 337; *In re* Crow, 60 Wis., 349; 19 N. W., 713.) In the present proceedings, it is true, it is alleged that the adjudication of the Court in Oregon was obtained by the introduction of false testimony, and is tainted with fraud. But such fraud is not a ground upon which to collaterally attack the judgment. (U. S. v. Throckmorton, 98 U. S., 61.) We find no error in the decision of the District Court, and the same will be affirmed."

The unfounded and unproved assertions as to alleged irregularities in some of these cases could not be proved at all under the doctrine of U. S. vs. Throckmorton cited in this case and, of course, the assertion here, no proof of which was ever attempted below, is no evidence.

So also in U. S. vs. Luey Guey Auck, 115 F. R., 252, Judge WHEELER held that when one Commissioner has taken jurisdiction of one of these cases and made a final order therein, no other Commissioner can proceed *de novo* in new, independent proceedings. Compare the very recent decision of HAZEL, J., in U. S. vs. Hills, 124 F. R., 831, as to the propriety of entering orders in these Exclusion cases, however erroneous his ruling may be as to the competency of such decrees in evidence in criminal proceedings against the parties in view of the principles of Kirby vs. U. S., 174 U. S., 47, and Sparf vs. U. S., 156 U. S., 51, 56.

This Court has repeatedly had occasion to apply the principle of *res adjudicata*, saying,

> "that this general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and

repose of society by the settlement of matters capable of judicial determination."

Southern Pacific R. R. Co. vs. U. S., 168 U. S., 1, 48.
See also Coffee vs. U. S., 116 U. S., 436.

It is of course equally settled that this principle applies to determinations based upon jurisdiction, whether made in Courts of record or not of record.

Gates vs. Preston, 41 N. Y., 13.
Reich vs. Cochrane, 151 N. Y., 122.
Mohr vs. Maniere, 17 Fed. Cases No. 9695 (affd. 101 U. S., 416).

Nor has Congress failed to provide methods by which the Commissioner's determination upon such issues can be proved, though if there were no express provision on the point, the power to hear and determine would carry with it power to make an order which can be proved, and to certify to such determination.

U. S. vs. Jones, 134 U. S., 483.
Hoyne vs. U. S., 38 F. R., 542.
Philips vs. U. S., 33 F. R., 164.

We are, however, not left to mere implication on this matter, for the general exercise by Commissioners of the fair and proper issuance of certificates attesting their determinations in these cases is based upon express statutory provisions.

Section 847 of the Revised Statutes in its enumeration of powers conferred upon United States Commissioners for which they may charge fees, besides its specific enumeration, also recites that the Commissioner is entitled to compensation "for any other service, the same compensation as is allowed to clerks for like services." Clerks of the

Court under Section 828 of the Revised Statutes are authorized to charge

> "for entering any reported rule, *order*, continuance *judgment*, *decree* * * * or making any records, *certificate*, etc., for each folio 15c."

as also,

> "for a copy of any entry or record or of any paper on file for each folio 10c."

Under these provisions United States Commissioners have for many years past been constantly called upon to issue a large variety of certificates, and their power to do so has been repeatedly sustained both in this Court and below;

See

U. S. vs. McDermont, 140 U. S., 151.
U. S. vs. Julian, 162 U. S., 324,

concerning certificates by U. S. Commissioners, decided upon the authority of the statutes just referred.

This long established usage of commissioners in issuing such certificates has direct statutory authority therefore, to sustain it, and the technical objection taken by Chinese Inspector Izard for his own ulterior purposes should have been overruled, instead of sustained, by Commissioner Benedict. Moreover, this Court has repeatedly held that in proceedings before United States Commissioners, just as in matters pending before a Justice of the Peace, absolute technical accuracy is not to be expected nor insisted upon.

Southworth vs. U. S., 151 U. S., 179.

When we leave the question of law here involved for a consideration of the merits as to the issuance of such certificates in these cases, it is difficult to

conceive of any class of cases in which it is more important to establish a plea of *res adjudicata* by such certificates than this.

As was pointed out in one of the dissenting opinions in this Court, in the Fong Yue King case (149 U. S., 698, at p. 372), it is not even apparent that any compulsory authority exists for securing testimony in these Chinese Exclusion cases.

Where the issue is that of citizenship, death or removal of the few persons who are in a position to give direct primary evidence of birth in a particular place soon removes such proof, and there are few issues more difficult to establish than the question of citizenship. It is in view of this fact that the Courts have created an exception to the hearsay evidence rule, by allowing, on the theory of pedigree, hearsay evidence as to time and place of birth. Morever, the executive officers have so often and for such long periods erroneously impounded and destroyed certificates of Chinese laborers, merchants, and returning merchanrs on entry, under general regulation to that effect issued and subsequently revoked, that Commissioner's certificates are frequently the only certificates adducible for numerous Chinese persons (see Treasury Decisions, No. 8572, 11606, at pp. 1048, 14375, 14654 and 17237).

In this case, defendant himself testified that his father, who was a witness more than five years previously before Commissioner McGettrick, has since died (fol. 16).

Some criticism is made with respect to absence of photograph on the certificate. At the date when Commissioner McGettrick issued this certificate in 1897, it was not common to mount photographs upon certificates for the identification of the person to whom they were issued, though, subsequently, such practice grew up more generally. There is, of course, no provision in the

statute, or any rule of court, requiring photographs to be mounted upon the certificates, and while their absence makes it more difficult for defendants to give the requisite proof of identity with the person to whom the certificate was issued, such is the only effect of the absence of a photograph.

The commissioner has not based his decision upon any lack of proof of identity, but has bodily excluded the certificate and refrained from giving it any weight. It is not necessary to refer to the very strong proof found in this record, of the identity of the defendant with the person to whom Commissioner McGettrick issued this certificate. The record contains an admission that already before defendant was taken into custody, he produced this certificate (fol. 11). He was known by the same name as appears in this certificate, and the Government, without any alias, proceeds against him under such name.

Though possession and production of the certificate already at the time of the arrest, together with identity of names unrebutted, would be abundant proof of identity, defendant testified as to the facts as to his securing the certificate the dates tally, places tally, and in fact the Government made not the slightest attempt to contradict him.

Instead of there being a determination against the defendant on the *facts* here, it is apparent that the Commissioner erred *on the law*, in refusing to give the certificate the force and effect to which a due process of law entitles it, as proof of the plea of *res adjudicata*.

POINT V.

The Commissioner erred in the Yung Lee case, No. 312, in declining to make an order for the issuance of a registration certificate.

The Commissioner's opinion appears in the record herein (fol. 51) and is as follows:

> "In this case it is sought to be shown that the Chinese person named, who was a laborer, did not procure the certificate of residence from a collector of internal revenue as required by Sec. 6, of November 3, 1893, because he was unavoidably prevented from so doing by sickness until after the expiration of the time set by the statute within which such certificate might be given. It is established to my satisfaction and by a credible white witness that he was a resident in the United States on the 5th of May, 1892; but is not clearly established and to my satisfaction that he was unable through sickness *during all the time given by the statute* to obtain a certificate of residence. It follows that he must be found and adjudged to be unlawfully within the United States."

The defendant himself testified, as did also a white witness, Dennis O'Sullivan.

The Commissioner's finding expressly establishes the fact that said O'Sullivan is a "credible white witness," and it is by this witness that residence within the United States, on May 5, 1892, has been established. This witness' testimony carries proof of defendant's sickness down to September, 1893, on which date said witness changed his route and saw little of defendant thereafter.

It is obvious from the record that the Commissioner was misled by such arguments as the Circuit

Court of Appeals overruled in U. S. vs. Lee Seick, 100 F. R., 398, into the belief that the fact of illness preventing registration had to be established by white testimony, while the statute clearly requires only residence within the United States on May 5th, 1892, to be thus proved. In addition to this, however, the Commissioner was evidently misled as a matter of law, in construing the statute, as indicated by his finding, of failure clearly to prove inability to register "during all the time given by the statute."

Taken in connection with the recital immediately preceding this, of the date of May 5th, 1892, it appears that the Commissioner overlooked the fact that the Act of 1893 repealed in terms Sec. 6 of the Act of 1892, which had required registration under the prior statute, and discontinued all proceedings and repealed authority therefor, because of alleged violation of the former law of 1892.

Moreover, it would further appear that the Commissioner has attempted to give this statute an unduly harsh and severe construction, to the effect that there must not have been a day during the statutory period during which illness did not prevent registration. This is an unwarranted and oppressive construction of the statute, not sustained by the authorities.

U. S. vs. Tye, 70 F. R., 318.
In re Chin Ark Wing, 115 F. R., 412.
Wong Fong vs. U. S., 77 F. R., 168 (C. C. A.).

Moreover, Chinese persons are entitled to a liberal construction of this statute with respect to time, because the delay of the Government in the matter of prescribing regulations and forms of certificates required by this Act of 1893, until November 25th, 1893 (T. D., No. 14,542½), at once cur-

tailed by nearly a month, the opportunity which the statute was designed to give within which to register, for registration was unauthorized, until after the forms and blanks had been established and distributed. This defendant ought also, therefore, to have been discharged by the commissioner.

POINT VI.

The objections taken to the complaints herein to the effect that they state no cause of action and were insufficient to confer jurisdiction should have been sustained.

While this question is somewhat similar to the one urged and overruled by this Court in the case of Chin Bak Kan vs. U. S., 186 U. S., 193, still the very language of this Court on this point, as well as the particular facts involved, clearly distinguishes the application of the point to the different cases.

In the Chin Bak Kan case, as is specifically pointed out in the opinion of this Court, "no objection was raised to the complaint" below on the ground alone urged, that it was merely on information and belief. That was the sole ground of objection taken, and the question was presented in cases of alleged unlawful entry, where it was conceded at the time of arrest that defendants had just come into the United States (p. 194), while here defendants are shown to have resided here continuously for many years.

In the present cases besides, we find complaints for non-registration specifically attacked below, all of which fail to allege, even on information and belief, the essential elements (*a*) that defendant was

a Chinese laborer, and (*b*) resided within the United States on May 5th, 1892; and moreover, the charge merely was that these defendants did not obtain a certificate from the Collector of Internal Revenue for the First Collection District, in which they were arrested, but which was not the city of their residence in 1893–4, as shown by the record, at the time registration was necessary.

As already shown in the cases hereinbefore collected, both under this law and under Article IV of the Treaty of 1894, it is clear that only Chinese persons who were laborers within the United States in 1894 were required to register, and they could register only during the limited period granted by the statute. Citizens of the United States by birth, it is well established, were not required to register, though of Chinese extraction. Non-laborers were not required to register. Minors were not required to register. Chinese persons who have since lawfully entered the United States and subsequently *bona fide* became laborers, are here lawfully without certificates. Accordingly, a large number of persons may be found within the United States to-day lawfully without certificates of registration because of mere lapse of time, and in all cases in which any of these persons were exempt from registration, when registration was required, have since become laborers, they would be lawfully within the United States without registration certificates.

The essential charge that defendants were of the prohibited classes required to register in 1892–4, but failing to do so, is not made.

Moreover, as already argued hereinbefore, the Treaty of 1894, the Act of 1901 referred to in the Chin Bak Kan case and the later statute of 1902, subordinating all these statutes to the treaty, have had the effect of making it error for the Govern-

ment to proceed upon such imperfect complaints as these.

While it is true that at the time the Geary Law was passed in 1892, Chinese laborers who neglected to register could be arrested without complaints under oath, that is no longer so under the subsequent amendatory statutes and treaty concerning this very matter of complaints under oath; to those already cited may be added Section 13 of the Act of 1888, which expressly requires complaints under oath, and which statute is in terms continued or enacted by the Act of 1902.

Accordingly, the general line of authority requiring complaints setting forth the facts establishing causes of action, is applicable here.

> Rice vs. Ames, 180 U. S., 371, 374.
> *Ex parte* Hart, 63 F. R., 249, 259 (C.C.A.).
> *Ex parte* Lane, 6 F. R., 34, 38 (Mr. Justice BROWN).
> U. S. vs. Tureaud, 20 F. R., 621.
> U. S. vs. Sapinkow, 90 F. R., 654, 660.
> West vs. Cabell, 153 U. S., 78.

Moreover, even before complaints under oath were requisite, the statute contemplated prior investigation by the arresting officer. For instance, the statute authorized the arrest only of Chinese *laborers* having no certificate, and inasmuch as proof on the question as to whether they are laborers or not, is not thrown by Section 6 of the Act of 1893 upon the defendants, such fact must be made to appear by the efforts of the Government; as, for instance, by such stipulation as was here made, that defendants were arrested working in laundries. That arrests without investigation even where sworn complaints were not necessary, are not authorized in these cases, was clearly ex-

pressed by the Circuit Court of Appeals for the Second Circuit in the case of

Reisterer vs. Lee Lum, 94 F. R., 343, at p. 346 (C. C. A.),

where the Court said, with respect to an arrest of an alleged unregistered laborer, after stating at that time that a warrant was unnecessary to justify arrest,

> "nor so far as appears did he (the Chinese Inspector), make the slightest effort to get information about the antecedents of the plaintiff. We cannot doubt that the case justified the conclusion that the defendant acted hastily and overzealously in making the arrest and allowed his suspicion to overmaster the discretion and judgment which he ought to have exercised."

Accordingly, a verdict against the Inspector for malicious prosecution was affirmed.

Moreover, in view of the statutory provision concerning complaints under oath found in Section 13 of the act of September 13, 1888, and in the Act of 1901, the language of this Court in Southworth vs. U. S., 161 U. S., 639, at p. 642, also becomes applicable as to the investigation requisite on the part of a United States Commissioner before issuing a warrant of arrest,

> "It carries, also, the further thought that in a discharge of his judicial functions, the magistrate exercises a personal and judicial consideration of every charge made, and subjects no one to the annoyance and disgrace of an arrest until, after personal and careful investigation, he, as a magistrate, believes him to be guilty of a violation of a law. The idea of perfunctory discharge of these duties, of a transfer of responsibility to mere clerks, of a wholesale proceeding against a multitude of

> citizens without personal inquiry as to the probability of the charge against each, is *something abhorrent to the true and* reasonable understanding of the conditions of judicial action."

It is submitted that the statutes and treaty subsequent to the Act of 1892, requiring warrants to be based upon complaints under oath—which the Government recognized by instituting the proceedings upon complaints—has had the effect of modifying the earlier provisions, at least to this extent, that a complaint stating facts at least upon information and belief is necessary before this oppressive reversal of burden of proof can be invoked by the Government, just as in revenue forfeiture cases the Government must establish probable cause, before the burden of proof shifts upon the claimant under Rev. St., Sec. 909. Nothing else can prevent these statutes from being used as an agency to work inexpressible oppression, extortion and blackmail, particularly against Chinese resident merchants.

POINT VII.

These proceedings were all barred by the Statute of Limitations of five years, since more than five years have elapsed since registration was authorized and the defendants were shown to have been continuously resident within the United States for upwards of five years, and in fact, upwards of 20 years with respect to each defendant except Lew Guey, the holder of the McGettrick certificate.

Even if these proceedings are not criminal, they are at least *quasi* criminal within the meaning of Section 1047 of the Revised Statutes, which reads as follows:

> "Sec. 1047. No suit or prosecution for any *penalty or forfeiture, pecuniary or otherwise*, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued. *Provided*, That the person of the offender or the property liable for such penalty or forfeiture shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property."

It is, of course, well settled that numerous classes of cases, such as actions for penalties, under the copyright laws, customs laws, contract labor laws, etc., though not strictly criminal, are still *quasi* criminal within the meaning of such provision.

Boyd vs. U. S., 116 U. S., 616.
Lees vs. U. S., 150 U. S., 476.
Johnson vs. Donaldson, 3 F. R., 22, Wallace, J.
Daly vs. Brady, 69 F. R., 285.
Bolles vs. Outing Co., 175 U. S., 262.
U. S. vs. Riley, 88 F. R., 480.

While these Chinese Exclusion cases are not to be reviewed as criminal proceedings, they partake so far of the nature of criminal proceedings as to be governed by these provisions, applicable to proceedings for penalties and forfeitures.

Ex parte Sing, 82 F. R., 22 (Coxe, J.);
U. S. vs. Wong Quong Wong, 94 F. R., 832 (Wheeler, J.);

U.S. vs. Jacobus (C.C.A.), 2d Circuit, unreported, holding that marshal's fees in Chinese Exclusion cases are embraced by the statutory provision concerning criminal cases; also group of cases decided by Wing, J., in the United States District Court at Cleveland, in October, 1903, holding in line with Ex p Sing *supra.*, that they are so far *quasi* criminal, that the Chinese defendants cannot be compelled to testify against themselves. In fact, when the language of the section here in question (1047) is perused, it is difficult to see what Congress could have intended by the words "penalty or forfeiture, pecuniary *or otherwise*," if such cases as these, arising under the Chinese Exclusion laws are not thereby embraced.

In every other case known to our law, Statutes of Limitations have been established, and it is difficult to conceive of any reason why these statutes should be construed as excepting this line of cases. In fact, they seem more called for as to non-regis-

tration charges than in any other class of cases known to the law, because by lawful means, as mere lapse of time, the number of cases of Chinese persons lawfully unprovided with certificates, is constantly increasing. Holders of certificates also grow day by day different in appearance than they did when the certificates were issued in 1894, and the charges are all based upon presence without a certificate which should have been obtained in 1894. Clearly, with all the vigilance exercised by the Government at its command, five years were ample time to remove persons claimed to have failed to perform this statutory duty, though, as already indicated, the number of such culprits must necessarily have been extremely small after November, 1893, from the very start. But the argument of the Solicitor General is directed more to the point that these are supposed to be "continuing offences," and so the statute has not yet run, he claims. This overlooks the fact that even with respect to so-called "continuing offences," this Court has overthrown the theory that the Statute of Limitations can be thus circumvented, and has held instead that the statute begins to run as soon as the offence is complete, even with respect to continuing acts like "withholding pension moneys and the anti-polygamy laws."

U. S. vs. Irvine, 98 U. S., 450.
Re Nielson, 131 U. S., 126, 187.

In fact, however, an analysis of the statute makes it clear that these cases do not involve any question of "continuing offenses" because registration was required, during the six months after November 3d, 1893, and forbidden subsequent thereto, so that the charge of non-registration was complete on the last day of the six months follow-

ing November 3d, 1893. It must surely be true that the provisions of the Chinese Exclusion Laws establishing judicial proceedings must be read in connection with some of the general statutes and laws of the United States like the rules of evidence, and as to procedure like the Statute of Limitations (*In re* Chow Goo Pooi, 25 F. R., 78, 80, 81, Sawyer, Hoffman and Sabin, J. J., and *in re* Ah Quan, 21 F. R., 182, 186, *Third*). Even as to rights created by Federal Law, such as patents, this Court has by implication found State Statutes of Limitations to govern, rather than to leave a class of cases outside all limitations (Campbell vs. Haverhill, 155 U. S., 610).

It is submitted that it is difficult to conceive of any class of cases in which there is more cause for invoking the Statutes of Limitations than these charges of non-registration, brought now so many years after the alleged acts were committed, and when, as here shown, the case may be made to turn upon the production of original firm books and articles of mercantile firms dissolved many years ago, but to which defendants belonged at the time of the passage of the Registration laws.

Of course, charges of unlawful entry stand upon a different basis, and the statutory period contended for does not begin to run until the entry has been effected, which date, of course, varies with each case.

It is no unimportant point for consideration in connection with these cases that until Chinese Inspector Izard's inquisition proceedings began no wholesale raids for alleged violation of Chinese registration provisions had been brought anywhere within the eastern half of the United States, in any event since the five year Statute of Limitations period herein contended for, expired, following the passage of the Registration Law of 1893.

POINT VIII.

The orders appealed from should be reversed and defendants discharged.

Respectfully submitted,

MAX J. KOHLER,
Of Counsel.

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JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT,
v.
THE UNITED STATES. } No. 307.

CHU DO, ALIAS CHU GEE, APPELLANT,
v.
THE UNITED STATES. } No. 308.

LEW GUEY, APPELLANT,
v.
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TOM HONG, ALIAS HOM POE, APPELLANT,
v.
THE UNITED STATES. } No. 310.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
v.
THE UNITED STATES. } No. 311.

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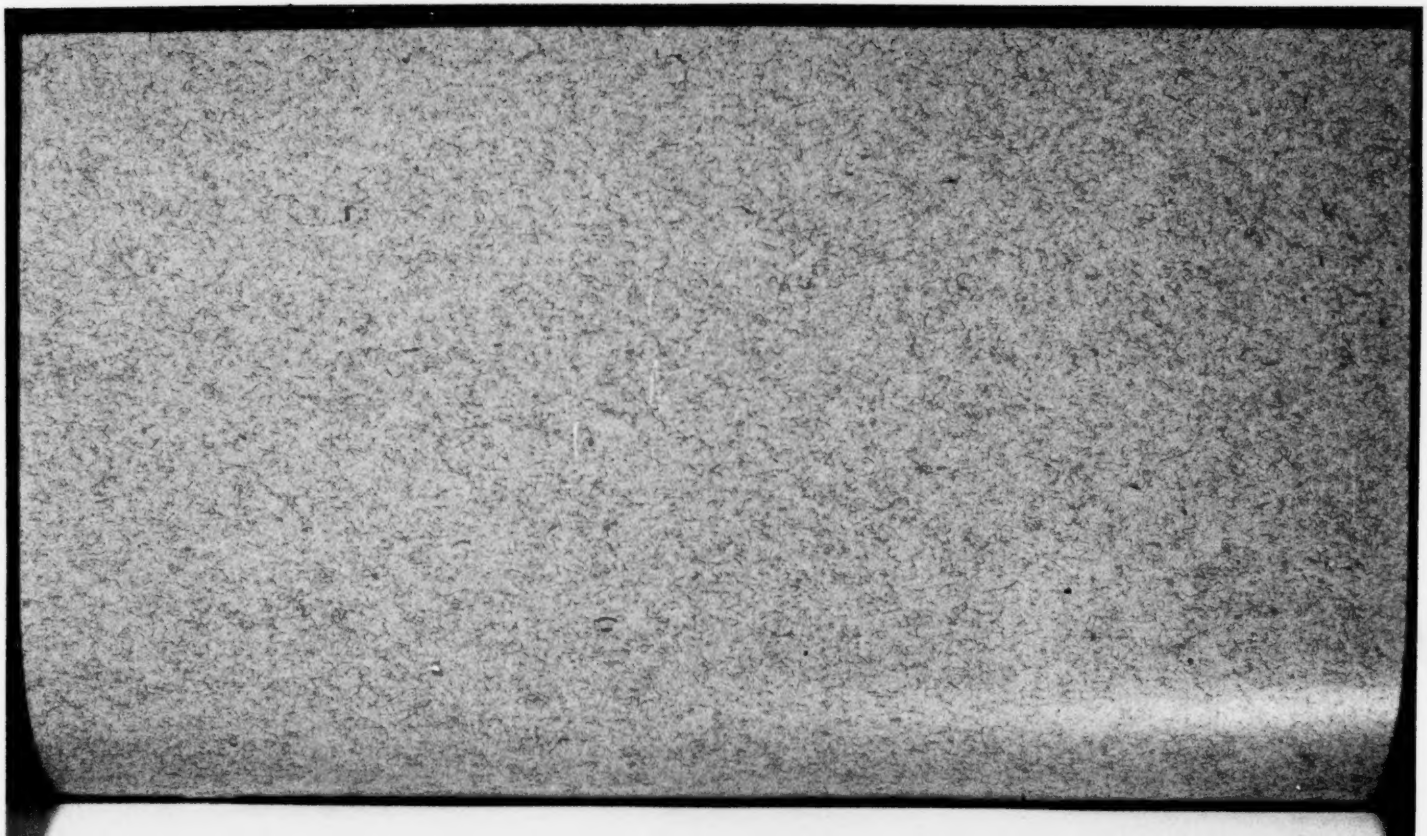
APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTIONS ON BEHALF OF THE UNITED STATES TO VACATE ORDERS ADMITTING TO BAIL; AND TO DISMISS OR AFFIRM THE APPEALS.



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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTIONS ON BEHALF OF THE UNITED STATES TO VACATE ORDERS ADMITTING TO BAIL; AND TO DISMISS OR AFFIRM THE APPEALS.

The Solicitor-General respectfully submits motions herein on behalf of the United States (1) to vacate the orders admitting to bail; and (2) to dismiss or affirm the appeals.

These Chinamen are laundrymen—that is, laborers—claiming to be merchants or native-born citizens—the usual situation. In two cases (Lew Guey; Chu Do, alias Chu Gee) the claim of citizenship was really made; in two others (Yung Lee; Ah How, alias Louie Ah How) the commissioner's order of deportation erroneously states that this claim was made; at least, from the evidence only the merchant claim appears in the two latter cases as in all the remaining ones.

In Lew Guey's case the alleged citizen presented a certificate of a former United States commissioner, purporting to be a certified copy of entries on his docket and showing that a Chinaman of that name had been before him some years ago charged with being unlawfully within the United States, and had been discharged. (Lew Guey, Rec., pp. 3–4.) Although it is stated that the discharge was on the ground of citizenship duly established, it still remains patent that the Chinaman now charged as Lew Guey has not at all been identified as the Lew Guey of the certificate. It is a notorious fact in the history of the administration of the Chinese exclusion laws that Commissioner McGettrick's "certificates," ostensibly mere certifications of his docket, were issued without any authority of law and were fraudulently used. It is especially clear that the issue was without warrant when we consider that the regular and exclusive certificates of the law are intended to constitute one of the most

important safeguards against unlawful immigration; and the "McGettrick certificates" were (and, as this case shows, still are) used fraudulently in a wholesale way, and were (and probably still are) the subject of widespread barter and sale for such use. That such certificates had no legal standing, and may and ought to be ignored by all Government officers, executive and judicial, does not affect the scandal of their issue and use for the illicit purpose which invokes them now on the chance that the claim of *res adjudicata* and identity may be successful. Furthermore, it is a commonplace of the subject to say that the claims of merchant status and of citizenship in which this high right has been asserted and founded on the most manifest perjuries, passed successfully before Commissioner McGettrick in an astonishing number of cases—cases which show, in the belief of the Treasury officers, the most evident lack of truth, merit, and good faith. The McGettrick certificate in this case was finally admitted by the commissioner, merely as showing a hearing before McGettrick, on the date named, in the case of a Chinaman named Lew Guey (id., p. 10).

The oral testimony offered by Lew Guey is to the effect that he was born in San Francisco; went to China when quite young; was before Commissioner McGettrick in 1897, when his "father" was present to identify him; his father told him he had been born in San Francisco; that is the only way he knows; his father has been

dead two years; he returned from China to the United States when about 15 years old (pp. 5–6).

In the case of Chu Do it was asserted that the father would be produced, but finally the alternative "uncle" appeared, who testified that the Chinaman was his nephew, was born in San Francisco twenty-six years before, and that he saw him there as an infant. (Chu Do, Rec., pp. 11, 12.) The witness's memory was not at all clear as to persons and occurrences in San Francisco about that time (p. 16), which is another well-known feature of such cases.

The merchant claims rest upon the testimony of substantially the same witnesses in all the cases. Indeed, the formality and uniformity of the testimony was such that before the list of cases was concluded it was stipulated that one witness would testify in a given and particular case as he had testified in the previous cases, and conceded that if another witness were called he would do the same thing. (Tom Hong, Rec., p. 9.) The testimony, then, in all the merchant cases is that a certain witness, as a collector of rents, had known the Chinaman for some years as a member of a firm. He had seen him selling goods when the rents were collected. He was told he was a member of the firm by other Chinamen connected with the establishment; he did not know in any other way. In one case—that of Yung Lee—the merchant claim was not made, but the Chinaman asserted that he was ill during the extension of the

period within which he was entitled under the acts of 1892 and 1893 to obtain a certificate of residence as a laborer entitled to remain in the United States; and a witness of similar character to the others, one whose calling and trade took him among the Chinese, corroborated this assertion. He knew the Chinaman; knew he was ill during the time mentioned; saw him in bed. (Yung Lee, Rec., pp. 5–7.)

The testimony, then, was perfunctory, largely immaterial, and entirely inconclusive and unsatisfactory. The commissioner's findings were clearly justified. The present laborer status was admitted, but it was alleged that at various periods in the past, and for varying lengths of time, the claimants had been members of one or other mercantile firms. Very naturally, under these facts and upon this unconvincing testimony, the commissioner was not satisfied by affirmative evidence that the Chinamen were entitled to remain in this country, and he ordered them to be deported. This order was affirmed by the district court upon appeal. (Ah How, Rec., pp. 11–12.) Thereafter, by orders of Mr. Justice Peckham, appeals were allowed to this court, and the Chinamen were admitted to bail pending the hearing and determination of the appeals.

Nor is my suggestion that the testimony herein is immaterial or worthless to be looked upon as mere assumption or unnecessary and unfounded suspicion. Apart from the established finality of

the findings below in such cases as the present, when the court has not been called upon under the particular law to enforce that quality of a commissioner's authority and for any reason has had occasion to touch upon the underlying situation, it has more than once been held or plainly indicated that testimony offered to show birth in this country and to sustain the consequent rights claimed is often, to say the least, doubtful and unreliable, and even when not contradicted is not to be accepted as verity. (*Quock Ting* v. *United States*, 140 U. S., 417.) And this view is necessarily involved in the rulings of the *Chin Bak Kan* case when the court refers to the *mere assertion of citizenship* and the inability of claimants to show that the "inestimable heritage" was ever possessed.

This is not strictly the occasion for entering upon the merits of these cases, or rather, as the term "merits" in its ordinary use is hardly applicable here, upon the controlling considerations respecting the jurisdiction and finality of the determination of the tribunals below. The immediate question is whether the admission of these Chinamen to bail is in accordance with the law. But since it is highly desirable, if not necessary, that the essential character of the cases—the *bona fides* of the claims, the propriety of pursuing the course of appeal into this court in view of the repeated determinations of the court on all the points in issue—should be before the court as bearing substantially upon the question of admis-

sion to bail, I desire to comment upon the real situation and meaning of these cases, as the foundation for a related motion to dismiss or affirm.

I.

THE ESSENTIAL CHARACTER OF THE CASES; THE LACK OF MERIT IN THE APPEALS.

The assignments of error contain much that is trivial and frivolous, and nothing substantial. It is as though counsel were unaware of recent decisions of the courts, and especially of this court. The regularity of process; the curing of formal defects—if such exist—by subsequent proceedings; the jurisdiction of the commissioner, and the finality of his decision; the constitutionality of the laws, including the acts of 1892 and 1893; the effect of the treaty of 1894 thereon—all these points have been considered by the court, most of them have been repeatedly determined, and all of them have been positively and conclusively determined.

Some of the objections are not only trivial, but seem simply ignorant or even misleading. For instance, it is said that the Chinamen were not brought before the commissioner according to section 13 of the act of 1888, in that they were arrested by a Chinese inspector without a warrant. But section 6 of the act of 1892 authorizes various United States officers, including Chinese inspectors, to arrest, and does not specifically require a warrant, which is in entire accordance with the

usual rule and practice respecting the immediate arrest when necessary of ordinary misdemeanants. The principle is also illustrated in the broad and unrestricted power given to all peace officers of the several States and Territories by the original Chinese exclusion law (section 12, act of 1882, as amended by act of 1884). Further, as the record shows, warrants in these cases were duly issued, executed, and indorsed accordingly by the United States marshal. Probably the exact course pursued is that indicated in rule 24 of the current regulations of the Department of Commerce and Labor, to which the Bureau of Immigration has been transferred from the Treasury Department. This rule in substance provides that every Chinese laborer found without a certificate of registration shall be arrested, after being allowed a reasonable opportunity to produce his certificate, by any officer of the Chinese exclusion service, and shall be taken before a justice, judge, or commissioner, *in order that a warrant may be issued upon oath for the commitment and trial of the accused*. The entire legality and propriety of this rule can not be challenged.

In the case of *Chan Gun* v. *United States* (9. D. C. App., 290), where the Chinaman had been arrested by a deputy collector of internal revenue, without a warrant, the court said: "We see no reason why the arrest in all such cases may not be made by the proper officers without a warrant founded on a complaint under oath."

I have analyzed this particular example of the objections in order to show their general character.

Let us now consider for a moment what recent cases have decided.

The case of *Chin Bak Kan* (186 U. S., 193), citing and reaffirming several previous decisions, held that the treaty of 1894 did not repeal existing law (see also case of *Lee Yen Tai*, 185 U. S., 213), the acts of 1892 and 1893 being before the court; that defects in complaint or pleadings did not affect the authority of the commissioner or judge or the validity of the statute; that as applied to aliens there is no question of the validity of the provision that a Chinaman must establish his right to remain in this country by affirmative proof to the satisfaction of the judge or commissioner—in other words, the adjudication of the judge or commissioner is final; that compliance with this requirement can not be avoided by the mere assertion of citizenship, the "inestimable heritage" of which "is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency without being able to show that it was ever possessed." That opinion also declared that the court can not properly reexamine facts already determined by two judgments below; that the policy of the legislation is opposed to numerous appeals, and that a Chinese laborer who has evaded the executive jurisdiction at the frontier is not entitled to demand repeated rehearings on the facts.

Whether the statements of the Chinamen now before the court as to the length of their residence in this country be true or not, the presumption from all the facts is pretty plain and conclusive that when they did enter this country they evaded the executive jurisdiction.

The effect of the *Chin Bak Kan* decision, restating principles previously decided, and the well-known opinions of the court generally sustaining the constitutionality of the entire body of Chinese exclusion laws, render it unnecessary to refer to other recent cases.

Only two new contentions are advanced by the appellants, and both are without merit. They say that the new law of 1902 repeals by implication the acts of 1892 and 1893, and that the offense is barred by the operation of sections 1046, 1047, Revised Statutes.

The act of April 29, 1902 (32 Stat., 176), has not heretofore been before the court. It has been considered by the Attorney-General on two administrative questions arising under it (24 Op., pp. 544, 561). The act provides (sec. 1) that all existing Chinese exclusion laws, specifically including certain sections of the act of September 13, 1888, theretofore considered to be of doubtful force as existing law, be "reenacted, extended, and continued so far as the same are not inconsistent with treaty obligations until otherwise provided by law." The second section of that act, by con-

necting the various acts and the treaty of 1894 in conferring authority to make regulations upon the Secretary of the Treasury, makes it evident that Congress considered the entire scheme of exclusion law embracing the treaty as forming one complete, harmonious, and consistent whole. There is, therefore, nothing in this act to support objection to the laws, but rather the contrary. The act manifestly continues and reaffirms all the previous laws. If the phrase "so far as the same are not inconsistent with treaty obligations," is appealed to, it is only necessary to say that the court fully determined in the cases of *Lee Yen Tai* and *Chin Bak Kan* that the treaty did not repeal existing law. In the *Chin Bak Kan* case the very acts which are now involved, those of 1892 and 1893, were held to be unaffected by the treaty, on the authority of the *Lee Yen Tai* case, and in that case the court used this language:

> So far from there being any inconsistency between the statute and treaty here in question, the twelfth section of the act of 1882, as amended in 1884 and continued in force for ten years from and after the passage of the act of 1892, is in absolute harmony with the treaty, and can be enforced without affecting or impairing any right secured by the treaty. On the contrary, the enforcement of that section as amended will serve to advance the purpose of the two countries in respect of Chinese laborers, as avowed in the treaty of 1894.

In the first of the Attorney-General's opinions above cited, the phrase just quoted from the act of 1902 was considered simply as confirming a previous decision of the Attorney-General which held that one particular provision of the treaty had replaced a slightly varying provision of a certain section of the act of 1888. It appears to me very manifest, as suggested by the second opinion of the Attorney-General (*supra*), that the rule of construction under which repeals by implication are never favored, on the ground that there must be a positive repugnancy between the old and the new law to work an implied repeal, is to be imposed with full force upon the appellants' contention here. The act of 1902 is merely additional legislation on the subject for the purpose of continuing the various laws before the ten-year period of limitation expressed in the act of 1892 had expired. The new act is harmonious with and only supplements the earlier provisions of law. There is little that is new in the new act, and there is nothing repugnant between that and former acts. For the phrase which I have quoted respecting consistency with treaty obligations, which is the only language of the new act suggesting by any possibility varying terms and conditions, was always a rule to be applied in construing the laws and treaties, respectively, and until and unless it should appear beyond doubt that some law subsequent to a treaty was meant to override and displace the treaty engagements.

It is manifest upon inspection that the act of 1902 simply preserves the *status quo ante* as to the ordinary situation within this country presented by these cases. Some new rules are laid down respecting the Chinese relations of our insular and territorial possessions, but this does not affect the present questions.

Section 1046 provides a limitation of five years for prosecutions under the revenue laws or slave-trade laws, and section 1047 imposes the same limitation on suits or prosecutions for penalties or forfeitures. Of course, neither these provisions nor any other statutes of limitation touch Chinese exclusion in the remotest way. But if the case were otherwise, and there were some pegs to be found in language of general import on which to hang an argument, it is sufficient to say that the offense is a continuing one, deepening rather than lessening as time passes and the illegal residence persists. It is the gist of the subject that the Chinaman never had, and has not now, any right to be here. It is from that point of view rather than the criminal side that the question is correctly approached. The defect in title is not cured and a right created merely by the passage of time, as certain civil and criminal liabilities or disabilities have always been removed in obedience to obvious reasons of governmental and legal polity. A Chinaman here without right is to be deported wherever he is discovered, apprehended, and heard, no matter how long this may

be after his illegal entry, or the date when his remaining here became illegal. He is not being tried for a crime; his status is determined upon "due process," as has been decided time and again. The single question is, Has he any right—the civil right or privilege—to be in this country? By no stretch of logic or imagination can the theory of the limitation of actions be applied to his case.

I have intentionally developed the nature of these cases beyond the strict demands of these motions in order that the court may know their essential character in considering the question of bail. Have the appeals merit? Do they exhibit *bona fides?* It seems to me that these questions are pertinent; that when the power and discretion of judges and courts respecting bail are regarded it is proper to present for careful scrutiny and deliberation all the elements of the case, the grounds of the appeal as just or flimsy, the underlying good faith, or the manifest endeavor merely to obtain delay, as the case may be. It is in this way, as well as by reference to the particular statutes and technical rules, that the mind of a court is informed and its will and conscience moved to action. By this means the court's discretion (assuming it to be unrestricted by positive law) is not challenged at all, but is merely appealed to and prayed to consider the matter thoroughly.

I trust, therefore, that in speaking frankly of these appeals I shall not subject myself to misapprehension or the imputation of any lack of respect

whatever. I assume that appeals are usually allowed and admission to bail ordered by justices of this court, acting as individuals, as by judges generally, almost as matter of course; that such action is often so clearly proper and so nearly a matter of right as to pass like most formal proceedings which call only for brief consideration and first impression. It seems that the case may now be called up with propriety on this motion, for reconsideration, so to speak, and for deliberate determination by the court *in banc* of the points involved in the allowance of the appeal and the admission to bail. I submit, in other words, with great respect, that such applications for appeal should not pass with formal inspection and on impression, but should receive full consideration and elicit conviction in the judicial mind before the application is granted.

I submit that these appeals illustrate, as strikingly as any cases could, the extension and abuse of the just privilege of appeal. It is certain that Congress intended the determination of the rights of a Chinaman to be prompt and final in the lower tribunals. No appeal was given to the Government and a single appeal to the Chinaman, viz, from a commissioner to a district court (sec. 13, act of 1888). The spirit and purpose of the law, as well as its terms, command speedy hearing and deportation, if the right to remain does not appear. This court has taken note of the fact that the policy of the legislation is opposed to numerous appeals and repeated rehearings. Nevertheless,

on all sorts of grounds and pretexts, by appeals and through habeas corpus, long strings of such cases continue to come before the court. The present list contains seven cases; within the past two years there have been at least twenty more. Pending hearing in this court, the Chinamen thus obtain a license to remain indefinitely; the delay which principally they seek (for they all wish to return to China ultimately) has been obtained, and one of the strongest objects of the law, speedy determination and action, has been nullified.

I respectfully submit that these appeals ought never to have been sought nor obtained; that when we come to examine the facts with any particularity, in the light of the decisions, the appeals are manifestly unfounded, without merit, and are interposed merely for delay. I submit that when such an application is made to a court or a judge, the records ought to be particularly scrutinized before an appeal is allowed, in order to learn whether the docket is to be encumbered and the court's time taken up to no purpose. How long and how often must this court go over the familiar ground? When the very last case decided by the court, affirming previous cases, says that the treaty of 1894 did not disturb the laws in general, nor the particular laws now invoked, how can it be justifiable to bring another case here on the ground that the construction of the treaty is drawn in question, and, in order to make weight, to proffer other "errors" which are the merest formalities

and have often been disposed of? The only exception, apparent rather than real, viz, the effect of the new act of 1902, suggests no change whatever, for its reservation of consistency with treaty obligations has, so far certainly as this case is concerned, already been met and enforced by the court's previous decisions. The court has already declared that the very laws called up are harmonious with the treaty.

Finally, on this branch of the case, I submit with respect the following contention: that even if it should be found that the particular laws presently to be cited do not restrict the general discretion lodged in the courts to admit to bail, and the court should take the view that cases not now foreseen may present meritorious contentions, properly invoking the exercise of the power to admit to bail while the cause is pending here, notwithstanding the general intention of the law forbidding delay, then, I say, that these particular cases should nevertheless not be protected by such doctrine, but demand that the court's discretion be exercised adversely to the appellants' offer of bail. A similar situation was presented in the extradition case of *Whitaker Wright* (190 U. S., 40), heard and decided by the court at the last term, wherein the court says (p. 63):

> We are unwilling to hold that the circuit courts possess no power in respect of admitting to bail other than as specifically vested

> by statute, or that while bail should not ordinarily be granted in cases of foreign extradition, those courts may not in any case and whatever the special circumstances extend that relief. Nor are we called upon to do so, as we are clearly of opinion on this record that no error was committed in refusing to admit to bail, and that although the refusal was put on the ground of want of power the final order ought not to be disturbed.

So here the position taken in the passage quoted suggests and justifies the view that although the court might reserve the power to take bail in general, it may properly decline to do so under circumstances revealed by these particular cases, and, to carry out that result, vacate the order made. I do not know any reason for supposing that the court may not with perfect right in a proper case reverse favorable action already taken as fully as it may affirm or decline to disturb an order entered below refusing bail.

II.

THE LAW AS TO BAIL.

But there are particular provisions of law as to bail in Chinese cases. The Government contends that these statutes limit the discretion of courts and judges and forbid the taking of bail.

As preliminary it may be observed that section 13 of the act of 1888 (25 Stat., 476; reenacted by act of April 26, 1902, 32 Stat., 176), allowing a

Chinaman ten days to appeal to the judge of the district court, shows the intention of Congress that there shall be no delay.

Section 5 of the act of 1892 (27 Stat., 25) provides that in the case of a Chinaman seeking to enter the United States, to whom the privilege has been denied and who has applied for habeas corpus, no bail shall be allowed, and the application shall be heard and determined promptly. This provides for the "landing" or entry cases, and is of course clear and positive.

One of the paragraphs of the act of 1893 (28 Stat., 7) provides as follows:

> Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail.

This provision applies, we contend, to all cases of deportation of Chinamen who are within the country—that is, to all cases whatsoever coming before a commissioner or district judge.

The suggestion has been made in other cases that the phrase "such order of deportation" refers exclusively to the cases of deportation contemplated by the first section of the act of 1893 amending the sixth section of the act of 1892—that is, to nonregistered laborers' cases. Even so, all the

present cases are embraced within the rule as to bail upon this strict construction, for they are cases of nonregistered laborers. But such construction is indefensible. The act of 1893 amends the act of 1892 and makes certain additions to the law. Between the amending portion of the act of 1893 and the phrase in question are inserted new and substantive provisions of law referring to merchants as well as laborers, making the restriction of "such order of deportation" to those arising under section 6 of the act of 1892 as amended a forced and violent assumption. This contention of an exclusive connection is plainly erroneous in the nature of the case, for the act of 1892 itself in its other sections provides for deportation generally and continues in force all existing laws. It is absurd and unreasonable to argue that the words "such order of deportation" do not embrace every order of deportation made under any of the connected body of laws in the Chinese exclusion scheme.

This view would cover the case even if the extreme and fanciful argument were suggested that where the *claim* is that of merchant status or citizenship the case does not accurately fall within the nonregistered laborer class. The *finding* of the commissioner or the district court is the test, and, indeed, all cases are ultimately to be placed in that class, and the Chinamen are adjudged to be and are expelled as nonregistered laborers, whatever their claims. And this is so, whether they were within the country at the ap-

pointed time and failed to register—the exclusive condition of the right—or have entered since, in which case they are utterly without right under all the laws—treaties as well as statutes.

It may be suggested that *United States* v. *Gooding* (12 Wheat., 460, 476–7) completely restricts the word "such" to its antecedent in the particular act. But this can not be maintained because of the difference in the laws and the circumstances of the two cases, and because, as above contended, the particular act here is merely an amendment and one of a series of connected laws, back through all of which its intendment clearly relates. The decision in the Gooding case was based upon the strictness of criminal pleading, and simply was that "such" following "any" in a highly penal law imposing punishment for fitting out vessels for the slave trade within the jurisdiction of the United States must be held to embrace only the vessels as described and located within our jurisdiction; otherwise the sailing from our ports of foreign vessels designed for that trade and casually here would constitute an offense within the purview of our laws, which it was unreasonable to suppose the legislature could have intended; and therefore it was necessary to aver that the fitting out, etc., was within the jurisdiction of the United States.

Here there is no such question of pleading, no ambiguity or insufficiency of averment to be guarded against lest a class of things plainly

without the reach of the law should be brought in. In the present matter Congress has in successive related laws provided for the single remedy of deportation in any and every case where a Chinaman is not entitled to remain here. Congress has laid down some particular rules by which a certain class, although admitted to be laborers, and therefore in general to be expelled, might (being here at a certain period in the past) have obtained and retained the right to remain. Congress has provided also by these particular rules that, failing to secure the right as provided, such Chinamen should be subject to the same deportation as all other forbidden Chinese. In other words, there is only one kind and condition of "deportation," viz, that of those who, for whatever reason and whatever the false claim advanced, are not entitled to remain in this country. Hence "such deportation" in the act of 1893 has for its antecedent *any* deportation ordered under the previous laws to which that act was simply a supplement and addition as the last link of a chain.

The suggestion has been made at some stage of these cases, I believe, and may be repeated here, that all law on the subject applies only to the so-called "landing cases." But I think it is very evident, as heretofore indicated, that just as section 5 of the act of 1892 applies to the seaport or frontier cases where admission to the country has been refused, so section 2 of the act of 1893 applies

to cases where clandestine entry has actually been effected; that is, to all remaining cases.

Now, while the intention of Congress is clear and certain that there shall be only one appeal, that bail shall not be taken, but that the Chinaman shall remain in custody of the United States marshal, and that the order of deportation shall be executed with all convenient dispatch, nevertheless it may be contended that this applies only in case a further appeal shall not be allowed, and that where on any ground such an appeal has been obtained to the circuit court of appeals (as has happened) or to this court, the law ceases to be of effect and the door is wide open to delay and admission to bail. It may be that the allowance of an appeal in the discretion of a judge or court carries with it as a rule and as a necessary consequence the operation of the principle of *supersedeas*, and in a case like this, where the very question is the personal right to escape the adjudged process, of admission to bail. But on this point I submit with respect that the state of the law should operate with great force upon the judicial discretion. Let us assume, although it is difficult to do so, that some unanticipated question may arise appealing very strongly to fundamental notions of right and justice and unmistakably calling for favorable exercise of judicial discretion to allow an appeal, whereupon in such a case it might naturally be deemed harsh and obnoxious to principle to maintain in close custody pending the

appellate adjudication. But here, where the case is so clear, where there is absolutely no merit, and the court is improperly called upon to announce again the rules conclusively settled in many cases, where plainly no right exists and delay is of the first consequence and the usual and apparent motive, I feel justified in insisting that the intention and mandate of the law that hearing shall be speedy and final, that there shall be but one appeal and no bail, passes straight over any residuum of doubt and ought to be regarded and obeyed by the judicial discretion.

Reserving, then, *arguendo*, the possibility of some case justifing action, I suppose it is certain that no general or fundamental right of appeal may be imported into this situation; that where Congress has given one appeal specifically no further appeal is to be inferred or implied, and that the allegation of fully settled questions of constitutionality and treaty construction can not avail to impose and establish a new course of appeal in these cases. Indeed, since under the general rule appeals exist only where the law expressly gives them, and where one appeal has been explicitly given, that is exclusive and no other exists, the first question at the threshold is, whether there is any other appeal than that to the district judge, and whether the appeal herein ought to have been allowed.

Although a special *allocatur* was granted here, the application for which shows probably that

counsel were not confident of their ground, yet necessarily the appeal prayed must be viewed as claimed of right (as calling for the construction of a treaty, let us say), for I do not understand that the special allowance of appeal so familiar in practice involves more than a certain formal deference (and reference) to the trial or appellate judge, or can confer a right not created or recognized by specific law. The general rule is that unless an appeal is clearly given by statute, there is no right of appeal (*Railroad Co.* v. *Grant*, 98 U. S., 398; *McKane* v. *Durston*, 153 U. S., 684; *Kohl* v. *Lehlback*, 160 U. S., 293); just as the general rule is that the appellate jurisdiction of any court and of this court must be so conferred; that is matter *stricti juris*. (*Sherman* v. *Grinnell*, 123 U. S., 679; *Interstate Commerce Commission* v. *Brimson*, 154 U. S., 447; *United States* v. *Gilliet*, 164 U. S., 42; *District of Columbia* v. *Eslin*, 183 U. S., 62.)

It is true that Judge Deady held in *United States* v. *Gee Lee* (50 Fed. Rep., 271), that the words "judge of the district court" in section 13 of the act of 1888 are equivalent to "district court," and accordingly held that a writ of error lies to the circuit court of appeals under section 6 of the act creating that court. The contrary view, however, is expressed in the case of *Chow Loy* v. *United States* (112 Fed. Rep., 354). There the question was as to the right of the district judge to dismiss an appeal for lack of prosecution. Judge Brown, citing numerous authorities, held that the terms

"judge of the district court" and "district court" are not interchangeable, and quoted with approval the following language of the court below in reference to section 13 of the act of 1888:

> As the provision with reference to the return of the warrant in the same section expressly distinguishes between a judge of a United States court and a United States court, it would seem to follow, on just rules of construction, that this distinction must run throughout the section. (110 Fed. Rep., 953.)

Judge Brown also declared that the decision in the *Fong Yue Ting* case contains expressions inconsistent with the view of the statute taken by the court in the *Gee Lee* case.

I concede that the practice on the subject of bail in the various districts is conflicting. At some times and in some jurisdictions bail has been or is even now taken. But on the whole I believe that the practice tends to the refusal of bail more and more, or at least to postpone action and await the determination of this court. But whatever the practice has been, the question is now up for settlement by this tribunal. The point was presented to the court by a preliminary motion in the *Chin Bak Kan* case, but was not determined. It is for this court to say whether, after full review of the subject, bail may be allowed, and neither erroneous construction nor faulty practice elsewhere can affect the matter.

Many determinations upon this subject in the courts below have evidently passed without opinion or reported decision. The reported cases are few and not particularly enlightening.

In the case of *Ah Kee* (21 Fed. Rep., 701), it was held that petitioner might be admitted to bail pending habeas corpus proceedings, and the decision was to the same effect in *In re Chow Goo Pooi* (25 id., 76). In the case of *Ah Moy* (ib., 808), the same court denied bail where, after final hearing on habeas corpus, petitioner applied for release on bail until the departure of the vessel.

Those cases arose before the passage of the act of 1892. Since that time the only reported decisions on this point seem to be those of *In re Chin Yuen Sing* (65 Fed. Rep., 788) and *Chan Gun* v. *United States* (9 D. C. App., 290). In the former case an application for release on bail was made pending appeal from the decision of the circuit court. Judge Lacombe, denying the application, remarked that "it would be a singular exercise of discretion which would release an immigrant on bail after the court has decided that he should not be permitted to enter the country, when the statutes require that he shall not be released on bail before the court has so decided."

In the *Chan Gun* case there was a cross appeal by the United States from an order of the supreme court of the District of Columbia admitting the Chinaman to bail pending his appeal to the court of appeals. The court was of opinion that the

order was erroneous, stating that the right to bail is not determinable by the rule applicable to ordinary cases under the writ of habeas corpus, but by the provision of section 2 of the act of 1893 prohibiting bail. "The execution of the order [of deportation] was delayed by the appellant's proceedings, and the statute, though harsh in its terms, necessarily governs the case" (pp. 304–305).

The *Chan Gun* case related to a Chinaman within the country, who, after arrest, was taken before a justice of the supreme court of the District of Columbia. In all the other cases just cited the Chinamen were seeking to enter the country and to escape the executive jurisdiction through habeas corpus.

Apart from the specific statutes cited, I do not think that general principles can be successfully invoked against the Government position in this matter. The constitutional provision forbids excessive bail; it is silent on the point whether or not bail shall be taken at all. It does not seem to me that the idea in general of bailability in most offenses, and the doctrines which favor personal liberty and which assume a man to be innocent until he is proved guilty, should rule this subject. There is no question of offense or crime here at all. Deportation proceedings are not the trial of a crime or offense against the United States, but the ascertainment of a fact in a civil controversy by appropriate and lawful means—the fact, namely, whether the conditions

exist upon which the particular alien may remain in this country. (*Fong Yue Ting* v. *The United States*, 149 U. S., 698.) Hence it is unnecessary to consider the doctrines laid down in the cases of *In re Claasen* (140 U. S., 200) and *Hudson* v. *Parker* (156 U. S., 277), which arose under criminal statutes. At the most the subject is to be regarded as quasi-criminal, and the "offense" not as a technical term, but in its broad meaning of entering the country clandestinely. But a Chinaman is deported not for that reason but because as an abstract proposition of law the particular individual is without any civil right to come into the country, or, having entered, to remain here.

Now, Congress, in order to expedite deportation, has chosen to restrict the rights of Chinamen in respect to this civil privilege of residence here, which they unsuccessfully claim, by giving them one appeal and keeping them in custody without enlargement on bail. Indeed, it may be said that in giving that appeal and in not requiring the determination of the commissioner to be final, as the determination of the executive officers is at the frontier, Congress has shown liberality and consideration on this point rather than restriction. Therefore, if a Chinaman, charged with knowledge of the law, of course, is unwilling to accept the determination of his status by the two tribunals below, which are meant to be final, and seeks delay and a further appeal, it is his own fault if, pending that appeal, he must remain in custody.

He has deliberately chosen to pursue that course, knowing its burden and penalty—if the mandate of the law regarding speedy deportation and bail are to be so regarded. Assuming he may have some claim of right which on the whole justifies the appeal, then he must take the burden with the benefit, and accept with all possible equanimity his detention and custody. That is, indeed, his own choice, and it is strange if, when the meaning and motive of the law are so clear, a refusal by the Chinaman himself to be bound by its terms and to conform to its results, after due adjudication, should succeed in obtaining for him the privilege of remaining at large in this country for an indeterminate period.

I submit that under the written law, which in no way authorizes admission to bail in these cases, but, on the other hand, expressly forbids it, and under a more enlarged view of the subject (disclaiming any intention to encroach by suggestion upon the judicial discretion), these Chinamen were not entitled to be admitted to bail; and the order directing that bail be taken should be vacated.

If the matter were not controlled, as we contend, by the negative provisions—the prohibitions, that is, of the law—even then, while the general and inherent authority of courts to admit to bail might be found sufficient to cover the special Chinese-exclusion case, certainly no affirmative authority to take bail in such cases can be found in the statutes. If we should construe, with great

freedom, section 716, Revised Statutes, authorizing the issue of all writs not specifically provided for; or section 945, declaring that bail, when required or allowed in civil causes, may be taken by a United States commissioner; or the provisions of sections 1014 and 1015, covering bail in criminal cases, on no reasonable grounds can it be made to appear that Chinese-exclusion causes are fairly included within any of these laws. The civil causes contemplated are ordinary suits and familiar situations and do not embrace this peculiar proceeding to determine the civil right of remaining here. And it has been decided in the *Fong Yue Ting* case, and other cases, that a Chinese-exclusion case is not criminal; a crime against the United States is not presented.

So far, then, as affirmative law goes, and disregarding still, for the sake of argument, a clear denial and prohibition of bail by the statutes cited, the fact is that the Chinese case falls between the two categories of civil and criminal as used in the Revised Statutes respecting bail, and is unprovided for on that point. In certain aspects the subject is quasi-criminal, and there is a *casus omissus* in the written law. If inherent notions of the power of courts are appealed to, the matter should be viewed by judicial discretion in the light of our declared and positive policy.

III.

SUMMARY OF REASONS FOR DISMISSING OR AFFIRMING.

I am convinced, after the foregoing review of these cases, that it is eminently proper, and, indeed, logical and necessary, to couple with the motion to vacate the order admitting to bail a motion to dismiss or affirm these appeals, upon the decisions of the court herein cited and upon the other well-known cases in Chinese exclusion law decided by the court.

It is not intended by this to submit alternative motions, either a motion to vacate the bail order or a motion to dismiss or affirm. It is true that to grant the latter motion would dispose of these cases completely. It is submitted, however, that the motions should be regarded as related and consecutive and not as disjunctive; that both motions should be acted upon. It is certainly very important to obtain from the court a clear and definitive ruling on the point of bail. If the court shall be favorably disposed toward the motions, then I think it is logical to regard them as naturally and properly leading to an integral disposition of the whole subject: First, a determination that the Chinamen are not entitled to bail, and thereupon, second, and forthwith that the appeals should be dismissed or affirmed and the appellants deported immediately.

It is also submitted that a foundation is laid for the motion to dismiss or affirm, not merely color-

able or illusive, in the suggestion that jurisdiction in this court is doubtful or incomplete. Here we get back, it is true, to the consideration of the reasonableness or propriety of taking these appeals. But it is suggested that the appeals themselves are colorable and without real claim, rather than the idea of defect in jurisdiction, on the ground that the mere easy allegation of a question of treaty construction does not bring that basis of jurisdiction into the case with any sincere meaning or any substantial effect. The assertion of jurisdiction is disingenuous; the point has been repeatedly decided; all judicial jurisdiction really ended below. The defect or doubt in jurisdiction is therefore patent, and if a formal claim of jurisdiction exists, it is *only* formal, and the real elements of the matter produce a a genuine dissent from the claim in an open mind.

Submitting, then, that the existence of any jurisdiction in this court under all the circumstances revealed is at least an ambiguous matter, and certainly not established if reason and propriety may be invoked, I may proceed to state the grounds upon which the appeals, if they ought not to be dismissed for lack of jurisdiction, ought certainly to be affirmed.

I have plainly shown, I think, that the appeals are unfounded, unjustifiable, trivial, and frivolous; that they have been interposed merely for the purpose of delay; that they are based upon assign-

ments of error which are entirely without merit, and which embrace propositions conclusively and repeatedly determined by this court. I am very certain that no cases were ever decided by this court by dismissing or affirming the appeals without hearing oral argument, and by a mere note of decision without opinion, which received that disposition with more manifest propriety than would be the case with these appeals if the court should so determine them. It is difficult to imagine a case which more strongly invokes the motto, *ut sit finis litium*, a principle of the law of the first magnitude which it is important to emphasize from time to time.

Much has been said lately, and by eminent authority, relative to the abuse of appeal in criminal cases, referring even to capital cases and other criminal prosecutions of great consequence. Much sober protest has appeared in public journals of responsible character, and the discussion is now gravely proceeding in current law reviews. Apparently American development respecting this branch of legal procedure, continuances, delays, appeals, can not be compared favorably with the orderly yet swift administration of the common law in the country of its origin and the constituent parts of her empire. In that subject the countervailing considerations of the great guaranties from time immemorial for the protection of those charged with crime, may operate on the

other side of the argument with impressive force. But in this matter now before the court there is no question of crime or guilt or innocence, no great guarantee the underlying reason of which demands that we err, if necessary, in favor of the accused. The inbred sense of justice, recognized fully by these very laws which enforce the sovereign power to exclude or expel those foreigners whom we do not choose to admit to the privilege of residence among us, is a sufficient guaranty respecting due determination of this question of merely civil right. Accordingly, an orderly and sufficient method has been established, and the proceedings should stop when that termination has been reached. No principle related to the "great guarantees" of the common law or of our Constitution requires more, and the most tender and scrupulous regard for the rights and immunities of defense should be satisfied. The policy and purpose of the law respecting such Chinamen and the demand for prompt decision and action on their cases are too clear for augument.

I submit and insist with great respect that these appeals ought to be dismissed, or the orders appealed from affirmed.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

FILED
NOV 14 1908
JAMES H. MCKENNEY,
Clerk.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES. } No. 307.

CHU DO, ALIAS CHU GEE, APPELLANT, v. THE UNITED STATES. } No. 308.

LEW GUEY, APPELLANT, v. THE UNITED STATES. } No. 309.

TOM HONG, ALIAS HOM POE, APPELLANT, v. THE UNITED STATES. } No. 310.

TOM DOCK, ALIAS HOM DOCK, APPELLANT, v. THE UNITED STATES. } No. 311.

YUNG LEE, APPELLANT, v. THE UNITED STATES. } No. 312.

LEE KIT, APPELLANT, v. THE UNITED STATES. } No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

SUGGESTION OF ADDITIONAL AUTHORITIES ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES.	No. 307.
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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

SUGGESTION OF ADDITIONAL AUTHORITIES ON BEHALF OF THE UNITED STATES.

I desire to submit to the court the following authorities upon the meaning of the principle of *stare decisis*, as applied under certain circumstances, which bear directly upon the right or

propriety of taking these appeals and the attempt evident in them to reargue settled questions.

This court has repeatedly declined to permit questions fully decided by it in former cases to be reargued.

In *United States* v. *422 Casks of Wine* (1 Pet., 547) Mr. Justice Story, delivering the opinion of the court, said: "It is not the habit of this court to consider points again open for discussion which have been once deliberately decided."

The cases of *Davies* v. *Slidell* and *Haynes* v. *Pickett*, reported briefly in the Appendix to 154 U. S., at pages 625, 627, were decided on the authority of earlier cases involving the same issues. In each case the court stated that it did not feel inclined to hear a reargument of the questions which had already been decided.

In the case of *Wright* v. *Sill* (2 Bl., 544) the court, remarking that the questions involved had been repeatedly before it, and had been uniformly decided in the same way, said:

> Whatever differences of opinion may have existed in this court originally in regard to these questions, or might now exist if they were open for reconsideration, it is sufficient to say that they are concluded by these adjudications. The argument upon both sides was exhausted in the earlier cases. It could subserve no useful purpose again to examine the subject.

In *Minnesota Mining Co.* v. *National Mining Co.* (3 Wall., 332) it appeared that the question had already been twice before the Supreme Court, and now, disguised by some unimportant variations in title and form, the matter was again presented. Counsel for the defendants was beginning to argue the case on the merits, "when certain of the older associates, who recognized the case as an old one, interposing, he was stopped by the Chief Justice, with an intimation that the court, as at present advised, thought argument on them unnecessary, and that he might consider himself as relieved." The court expressed itself in the opinion as follows:

> This is another, and it is to be hoped the *last*, attempt to persuade this court to reverse their decision in this case. * * * Parties should not be encouraged to speculate on a change of the law when the administrators of it are changed. Courts ought not to be compelled to bear the infliction of repeated arguments by obstinate litigants challenging the justice of their well-considered and solemn judgments.

I submit that the principle of these authorities applies to the present situation, and is by no means restricted to a situation wherein the particular controversy is absolutely identical with some previous appearance in respect to subject-matter, as, for instance, a piece of property, or the actual

individual interests involved, even if the formal parties are not the same; that is to say, the principle applies fully wherever the situation is precisely the same, even if the parties are entirely different.

HENRY M. HOYT,
Solicitor-General.

NOVEMBER 12, 1903.

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FILE COPY. 2729

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

Supreme Court
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JAMES H. McKENNEY,
Clerk

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES. — No. 307.

CHU DO, ALIAS CHU GEE, APPELLANT, v. THE UNITED STATES. — No. 308.

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TOM DOCK, ALIAS HOM DOCK, APPELLANT, v. THE UNITED STATES. — No. 311.

YUNG LEE, APPELLANT, v. THE UNITED STATES. — No. 312.

LEE KIT, APPELLANT, v. THE UNITED STATES. — No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR THE UNITED STATES, WITH ESPECIAL REFERENCE TO THE BRIEF FILED BY LEAVE OF COURT ON BEHALF OF THE CHINESE CHARITABLE AND BENEVOLENT ASSOCIATION OF NEW YORK.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, *v.* THE UNITED STATES.	No. 307.
CHU DO, ALIAS CHU GEE, APPELLANT, *v.* THE UNITED STATES.	No. 308.
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YUNG LEE, APPELLANT, *v.* THE UNITED STATES.	No. 312.
LEE KIT, APPELLANT, *v.* THE UNITED STATES.	No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR THE UNITED STATES, WITH ESPECIAL REFERENCE TO THE BRIEF FILED BY LEAVE OF COURT ON BEHALF OF THE CHINESE CHARITABLE AND BENEVOLENT ASSOCIATION OF NEW YORK.

I do not think it is necessary to notice Mr. Kohler's argument at length. He has himself in previous cases addressed the same line of argument to the court.

Mr. Kohler charges that the Government makes an entirely unauthorized and unjustified attack upon Commissioner McGettrick's certificates. I spoke of the notorious use of such certificates, and said that the laws providing for all legitimate Chinese certificates do not authorize these peculiar certificates, and certainly do not warrant the use made of them, and urged the correctness of the commissioner's limitation of the certificate as evidence. I say again that the purchase and sale of McGettrick certificates, and the fraudulent use of them, are notorious in the history of the enforcement of the Chinese-exclusion laws. For instance, four such certificates were recently produced by Chinamen at a hearing in the northern district of Ohio. (See post.) Judge Ray in the northern district of New York has excluded "McGettrick certificates." (*United States* v. *Lew Poy Dew*, 119 Fed. Rep., 786.) In the course of his opinion, Judge Ray says: "Evidence was given that this man McGettrick was engaged in the business of making and selling such certificates." (p. 789.)

Mr. Kohler says he will avoid any such sweeping and unfounded generalizations, and proceeds to make generalizations by charging in effect that recent Government arrests of Chinese persons have been made in pursuance of nefarious schemes, as part of a plan of oppression, extortion, and bribery, in order to force the sale of other commissioner's certificates of discharge, which, of

course, are the very kind of certificates that the Government is seeking to remove from the field, and that, in use at least, the McGettrick certificates were and are.

The court, I take it, is not concerned, nor is the Government here concerned, with the cause of removal of one Chinese inspector referred to and the transfer of another to a different field of service. On the other hand, both the court and counsel are concerned with one McGettrick certificate at least.

My statement, which counsel for appellants refer to as rather ingenuous (p. 6 of that brief), simply meant that the same witnesses testified in precisely the same way as to merchant occupation in several of the cases—so much so that in one case the testimony was simply stipulated—when the usual nature of these Chinese partnerships, with an indefinite number of "partners" constantly changing, is evident from the testimony itself. Counsel say, "*Each was a merchant, each a member of the same firm at the same place of business;*" but the commissioner properly held that this was not so. His decision in effect is that while they were performing ordinary mercantile duties about a shop rather than performing manual labor, they were not merchants, and this was correct. It was at least strange that upon these chance arrests—chance in the sense that there was no apparent connection between the Chinamen, except that two were working in the same laundry

in Brooklyn and the third in a laundry a block away—all three should claim to have been merchants at the same time in the same firm located in the city of New York.

The genuineness of the McGettrick certificate in the *Lew Guey* case was *not* admitted. (Appellant's brief, p. 23.) The validity of the signature only was not objected to. (Rec., p. 9.) The Government strenuously objected to the admission of the certificate, "as in no sense proving the judgment alleged to have been rendered by Mr. McGettrick in this case of Lew Guey." The commissioner admitted the certificate "as showing a hearing before Commissioner McGettrick on the date named in the case of a man by the name of Lew Guey." The whole attitude of the Government, in dealing with its alleged validity and force, was intended to impeach it and did impeach it beyond the limited scope which the commissioner's decision gave it. (Rec., pp. 9–10.)

Without taking up the intricacies and full extent of counsel's contentions, I submit the following brief statement of the propositions of the Government, which I believe are impregnable and fully answer the opposing arguments:

THE GOVERNMENT PROPOSITIONS.

That Chinese laborers in this country either were here before May 3, 1894, and ought to have registered under the acts of 1892 and 1893, and if they did not are subject to deportation; or if they

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were not here then, they have entered since, contrary to the prohibition of the treaty and the law, unless they reentered as "returning laborers" and possessed the proper certificate as such.

That whether a given Chinese person is a laborer or not is the very question confided to a commissioner to decide.

That the exceptions to the certificate requirements in the case of domiciled merchants returning to this country under the *Lau Ow Bew* decision, and in the case of a legitimate wife or minor children of a domiciled merchant under the *Gue Lim* decision, give no right whatever to Chinese laborers to be in this country without certificates.

That the law defines a laborer and a merchant, and those claiming to be merchants must bring themselves clearly within the definition and conditions, whether they are entering originally, or are reentering, or have been arrested as laborers and are defending against that charge, always remembering that the status in fact in the latter case is to be settled by the commissioner, and that the opposing argument is merely an attempt through the suggestion of refinements and distinctions to get around and behind the commissioner's findings.

That there is no room in the law for the notion that a Chinese person, technically a minor, whose claim, if it should be made, that he is a citizen by birth is not established, who has merely been here for an uncertain time and is found to be a laborer in fact, can escape the result of that status merely

because of his minority, or because he was here for a certain time during a minority of still tenderer years. Nor is there any room in the law for the contention that a Chinaman who validly entered as a merchant may in *bona fide* cases afterwards become a laborer and remain here as such. That is merely one of the numerous remote suggestions in Mr. Kohler's brief. I am aware of no such cases. It will be time enough to consider that point when a case is presented wherein there is no doubt of the original legitimate entry as merchant, and no doubt either of the subsequent *bona fide* change to the laboring class. The suggestion is highly characteristic of the shifting and illusory character of Chinese claims.

It is well to recall not only that the treaty and laws forbid the coming here or remaining here of Chinese laborers, with a certain narrow exception (returning laborers under Article II of the treaty of 1894), but that both treaty and laws explicitly and fully name the privileged classes who may come and reside here. Strictly, not even Chinese members of the learned professions could practice their professions here unless they genuinely came under one of the privileged classes, viz: "Officials, teachers, students, or merchants, travelers for curiosity or pleasure." (Art. III of the treaty of 1894.) We do not need to carry the argument to that point; we are not dealing here with any such Chinese persons. The effort has been made on many occasions to shade and mitigate the

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meaning of the law and to show that a particular person was not a laborer, but was in some category between the laborers and the privileged classes, and therefore was not excluded, but fell within the liberality and equity, so to speak, of the privileged-class category; or else that he was so definitely related to one of the privileged classes as to be attached thereto. But the definitions and intention of the law do not permit such reasoning. That is not the true conception and theory on which the law is founded. The enforcement of the law, of course, seems harsh to the people affected, even where the law has plainly been violated. It seems oppressive to the offender and to many other people, in any case, to send him back to China. Except in that sense, I venture the assertion, and I entertain the conviction, that there is not one case in which the rigorous and therefore proper enforcement of the law really operates harshly and oppressively to the individual, where there are a hundred cases in which clandestineness, fraud, and perjury, respecting both the entry into the country and the remaining here, are receiving their meet penalty when deportation is effected. The true theory of the law is indeed quite different. It is manifest, for instance, that a "merchant's clerk," or an "accountant," or a "manager," is not a merchant and does not belong to any other of the excepted classes. Such people are either actually or constructively laborers; and on the whole

situation the conception expressed in 22 Opinions, 130, 132, that "the true theory is not that all Chinese persons may enter this country who are not forbidden, but that only those are entitled to enter who are expressly allowed," gives the proper view of the law.

I need add nothing to what was said in my previous brief on the claim of citizenship, and on the view of that question entertained by the court as revealed by the *Chin Bak Kan* opinion. The evidence, both as to the merchant classes and the citizenship cases, speaks for itself, and the commissioner's findings must be affirmed.

To illustrate to the court by a recent instance how difficult it is to enforce these laws, and how new avenues and loopholes of escape are constantly opened which the Government under serious embarrassments is endeavoring to close and keep closed, I may refer to certain cases heard and decided within the last month before the district judge for the northern district of Ohio. As I have stated above, four "McGettrick certificates "appeared in those cases. They are not yet reported, and I give extracts from the stenographer's transcript on the bill of exceptions in an associated case in an appendix. The question was raised at the outset whether the individuals arrested were in fact Chinese persons. The testimony showing that they were came from the Government inspectors and from a native Chinese interpreter and was positive and clear. One of the Chinamen

admitted his birth in China of Chinese parents, and both ethnologically and racially the men were shown to be Chinese persons as completely as any such fact ever was or could be shown in the world. Yet the court held that the Government would be obliged to show by expert scientific testimony, if possible, the fact that the persons were Chinese, and upon failure to do this to the satisfaction of the judge the Chinamen were discharged. In the test case, at least, if not the others, the Chinaman had entered clandestinely and recently, and was standing in court marked by all the unmistakable characteristics of feature, frame, and garb as the ordinary "Chinese person."

I venture to give another instance of the difficulties in enforcing the law. In certain portions of the country Chinese, claiming by a set phrase to be citizens and then standing absolutely mute, are excluded by the executive officers after due examination. They obtain habeas corpus and the cases are referred to a commissioner sitting as special referee for the court. They are not the Government's cases, but the cases of the Chinese against the Government. The commissioner claims for this service a fee which no existing law allows, and the United States can not therefore pay, and, indeed, ought not to be called upon to pay. The Chinamen willingly pay the fee when they have any reason to think the commissioner's finding is in their favor. Surely

there is some remedy or protection for the commissioner—as, for example, by an appropriate order upon the moving parties—short of the result, which is imminent, I am authoritatively informed, that if the United States does not pay the fees claimed, the petitioners will all be discharged. Here is another evidence that the Chinese deceive the courts and fraudulently use them. On the theory that the writ is always matter of course, the claim disallowed by the executive is again set up, and by the mere assertion of citizenship the inquiry shifts from the executive authority to the courts. In this peculiar dilemma many Chinamen may walk out of court by grace of discharge under habeas corpus certified as citizens of the United States without a shadow of right to the title; and the United States appears to be powerless, at least for the time being.

It is very doubtful indeed whether the Government has any right of appeal or review respecting the point decided in Ohio, and yet that point is fundamental and certainty about it essential in every district of the United States; and whether or not there would be a right of appeal in the habeas corpus cases great injury would be done and numerous Chinamen so far further fortified in their claim to be citizens if the writs so freely issued are sustained and the Chinamen discharged because the Government will not pay the referee's fees.

I give in an appendix the views of Judge Wheeler, of the Vermont district, on the right to the writ under such circumstances, in which he construes the meaning of the recent cases of *Chin Bak Kan* and the *Japanese Immigrant Case*. But, so far, Judge Wheeler stands alone in thus applying the judgments of the court.

Regarding the strictest notions of the writ of habeas corpus as sacred, there appears to be an obvious and reasonable distinction, susceptible of being shown with strong presumption in a petition, between a *bona fide* and meritorious case which might arise and the interminable list of Chinese applications following careful executive examination and exclusion.

I say, with knowledge that the implication of the statement is grave, and without meaning to transgress the bounds of proper respect, that these two occurrences do not appear to me to constitute ordinary checks in litigation which are to be anticipated just because the judicial function is to decide between opposing views. It has appeared to me, after due deliberation, entirely proper to apprise the court of these current events in the executive and judicial dealings with the law, looking especially to the relations of the individual members of the court as circuit justices.

In case the court shall think that I have broken the bounds of proper reserve as to the particular record in speaking of these incidents, or opposing

counsel should ask, "What have such facts to do with the present cases and records?" I beg to say, with deference to the court and with respect to counsel, that they have this to do with it: In such ways, by protean shifts and devices of the Chinese, by proceedings and claims which deceive and fraudulently use the courts, by conceptions of the law which appear to be contrary to the reason and common sense of mankind, and by delays, continuances, and appeals the law is ignored and made nullity. The different methods (not, of course, including the courts' functions in hearing and deciding) are all connected and are part of a confederated and conspiring scheme. I do not mean by this to suggest that the Chinese association, whose brief was filed herein by leave of court, acts for any other purposes than it professes by its title; but there *are* associations which make a business of smuggling Chinese into the country and defending their right to remain here after they have been smuggled in. As opposed to all this, this court has laid down principles and settled the law so as to constitute a sure guide for the executive and the inferior tribunals, in these cases. in the recent occurrences above detailed, and in any other Chinese situations conceivable or likely. There is no excuse for the continued evasions and defiance of the law, and since the Government is charged with the duty of enforcing these existing laws (as in a very just

sense the courts also are), and relies upon this court and its judgments in its endeavors to do so, if the court shall approve the Government's contentions on the present motions, its authoritative pronouncement herein will notify inferior courts, parties, and counsel of the meaning of the court's judgments and the reach of its mandates, and will go far to check the various evils and maintain the scope and force of the law.

I submit, respectfully, that the motions herein should be granted.

HENRY M. HOYT,
Solicitor-General.

APPENDIX A.

ABSTRACT OF AND MINUTES FROM STENOGRAPHER'S TRANSCRIPT ON BILL OF EXCEPTIONS IN UNITED STATES v. HUNG CHANG, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

(The Government is as yet unable to obtain the bill of exceptions as signed or to be signed.)

In the case of *United States* v. *Hung Chang* the testimony of the Chinese inspector showed that the Chinaman was taken into custody on a railroad train at Cleveland; that, according to his own statement, he had come from "Vancouver and Buffalo." This statement implies a recent clandestine entry, which is corroborated by other statements, *ut infra*. On being asked the question whether the Chinaman, plainly such by his general appearance, garb, queue, etc., was in fact a Chinese person, the court, on the objection that the witness is not shown to be qualified to answer the question, permitted the inspector to be cross-examined on that subject. On the cross-examination, running to great length beyond the witness's familiarity with Chinese from his constant dealings with them as inspector, to ethnology and history, and the distinctions between Koreans and Chinamen, etc., the court sustained the objection on the ground "that if judgment of deportation were rendered against one other than a Chinese person, the most sacred guaranties of the Constitution, of the organic law, would be violated."

The chief Chinese inspector was put upon the stand, and on the same sort of an examination and cross-examination, in which the court interposed, the court pointing out, for instance, that an answer of the witness beginning to describe peculiar characteristics of Chinese features, etc., is "an assumption that he knows a Chinaman when he sees one. He must first know that before he can know that the characteristic belongs to a Chinese person," the objection was sustained, and this witness's testimony also was excluded.

The Chinese interpreter, a Chinaman, testified that he himself was a Chinese person; that he had lived in the United States twenty-five years; that he was born in China, in the Canton district; that from his own knowledge so acquired he is able to determine whether or not a certain person is a Chinese person or a person of Chinese descent; that Hung Chang is a Chinese person. This testimony was objected to, and upon cross-examination the court asked the following question:

> First, have you read any book upon the subject of the racial distinctions between the Chinese and other people?

The interpreter's testimony on this line was also excluded. On redirect examination this interpreter, himself a Chinaman, further testified that Hung Chang conversed with him at the county jail in the Chinese language of the Sun-ling district near Canton; that Hung Chang admitted he was born in China; that he had recently entered the country from Canada; that he said he was a full-blooded Chinese; that his father and mother were Chinese; that his grandfather and grandmother were Chinese. As to this testimony

of an admission, the court overruled the objection and admitted the evidence.

Upon a stipulation that Hung Chang was himself in court under a subpœna, he was asked to state the nationality and blood of his father and mother; but this question was objected to, and the objection was sustained by the court.

A motion to discharge the Chinaman on the ground that there was no evidence followed, and upon argument on that motion, and in response to the contention of the Government that when a *prima facie* case was made out the burden of proof was upon the Chinaman to show that he was entitled to be and remain in this country, the court replied: "Not on that issue [meaning the race issue]. Upon the question as to whether the person arrested is a Chinese person the law is silent as to the character of proof."

As to the Chinese interpreter's testimony the court says to the Government counsel:

> What would you say on that point? The testimony of Moy was that this defendant, in answer to questions, stated that he was born in China; that his parents and grandparents were full-blooded Chinese persons. Would the latter statement, as to who his parents were, be anything else than opinion evidence as to blood or race on the part of the defendant?

And again (omitting in the main the Government counsel's part in the colloquy):

> The COURT. Then you came directly to that. As I suggested before, he has said that his father and mother were Chinese persons. Is that anything more than his opinion as to the character of blood flowing in their veins? * * *

Is it admitted that it is an impossible question to answer in science, to what race a man belongs; that that question can not be ascertained by a scientist without inquiry into his geneality [genealogy]? * * *

It is not a question of parentage, but of blood. Suppose this person has no known parents. The question is, Is the blood flowing in his veins that of one race or another. Is that a question that can not be answered in science? Is that your position? * * * But you are stating that it is impossible, otherwise than by the character of the proof you have offered, to prove the question made. I wanted to know if that is the position of the Government—that it is absolutely impossible to be determined scientifically, as the difference of species in animals is determined.

* * * * *

The UNITED STATES ATTORNEY. I simply advert to the character of the proof, not to the strength of it.

The COURT. It is opinion testimony. The weight of opinion testimony goes to whether one has knowledge or has not. There are scientists who deal with these things in the animal kingdom, who pretend to be able to make those distinctions, and give their reasons; such great minds as Darwin and Huxley devoted themselves to the recognizing and classifying the distinctions that exist between species. Now, is it your attitude that there is no such possibility with respect to the human race? * * *

What the Government may do through its executive officers we have nothing to do with in this court. The Government can say that you may go out and arrest anyone whom you please, whom you suspect to be a Chinese person, and deport them. We

can not interfere with that. But when the Government provides that so far as arresting a person within the body of the community is concerned, it shall be done in the courts of justice, then it seems to be an intimation that the ordinary rules of courts of justice shall prevail and shall guide in determining the issues thus raised. * * * But when you may arrest anyone in the body of the country by process of law, affidavit, and warrant, and bring them to the bar of a court charged with being of a race practically deprived of rights that would exist if they were not of that race, that is another matter; because this arrest may be directed against any person in the community, at the will of the maker of the affidavit. He is not excluded from arresting a citizen of the United States, a subject of Great Britain, or a citizen of any nationality. They may be brought in here under this charge, and the court can not distinguish, as they come in, whether they are persons who have rights or persons who have none. * * * The question has never been directly made, so far as I have been able to discover, of the imprisonment or deprivation of liberty of a person charged under this act, which was necessary to take him to the point of deportation and ultimately to China, where the person was not a resident or never had been a resident of China; that question, so far as I have been able to discover, has not been decided. I am inclined to think that in the case of a person born in Great Britain, arrested in this country, found to be a Chinese person and deported to China, when such a case as that comes up the court will hold that it amounts to banishment, that it amounts to sending one

to penal servitude, or is in the nature of it, and is a punishment which ranks with imprisonment at hard labor. * * * In this case there is no such element. * * * Undoubtedly, if the person here charged had in open court stated that he was, for the purposes of this issue, the trial of this issue, a Chinese person, the court, as in all other cases, would accept his position on that issue. * * * We have substituted for that the testimony of Moy, who states that in answer to certain questions put by him, dictated by O'Neill, the Chinese agent of the Government, defendant stated that he was born in China, and that his parents and grandparents were full-blooded Chinese. * * * This is not an ordinary confession, * * * it is a translated confession. * * * It rests in the ability of the interpreter; the exactness of the language of the translation rests in the ability of the translator. The one statement that is reputed to have been made—that he was born in China—would not itself be decisive at all on the question at issue, which is whether he was a Chinese person; the fact that he was born in China may or may not have made him a subject of China. The statement that his parents and grandparents were full-blooded Chinese was a matter of opinion, of course, on this racial question. So far as the peculiarities and characteristics of the person in court charged are concerned, that he is of the complexion described, could not without other testimony convince me of what race he was. That anyone could distinguish this person, with the little knowledge that I have on the subject, from a Japanese or from the many others of the Mongolian race, seems impossible. * * * It

is the best evidence in its nature that is required, not the best evidence available in the particular case. That there are means of making racial distinctions, observing, deciding with the accuracy of science, as to what race a man belongs to, must certainly be true. * * *

The fact that Hung Chang was born in China would not be conclusive in the absence of evidence as to what the law of China was, that he was a subject. In view of the fact that this is the issue, is he or is he not a Chinese person; that there is evidence in its nature better than the opinion testimony offered; in view of the fact, even if we accept it as a fact, that the defendant was born in China is not conclusive on the subject of his being a Chinese person, naturally; and that his statement, taking into account fully the circumstances under which this statement was given, with respect to his parentage or the race of his parents, was only a matter of opinion; that the proof which ought to be required in court, at least, the demand for proof upon so important an issue has not been met; the motion is therefore granted and the defendant discharged.

So that in this way a new burden of proof—a burden so construed as to be impossible to shoulder—is placed upon the Government, and the Chinese burden of proof under the law vanishes completely and finally. And under this ruling a man's own statements as to his birth and parentage are not received as proof, and the Canton Chinaman or coolie, plainly to be recognized as such, standing in court as he has appeared before the world for centuries, nevertheless is not a "Chinese person."

APPENDIX B.

United States district court, district of Vermont.

IN RE MOY QUONG SHING ET ALS. ON HABEAS CORPUS.

(Not yet reported.)

OCTOBER 10, 1903.

WHEELER, J.

The persons detained are of the Chinese race, lately from China, and are restrained of their liberty at the port of Richford, where they sought to enter this country.

The petition set forth restraint in a detention house by persons acting as officers of the United States, and challenged their authority and the legality of their proceedings. The return of the petitionee, Weeks, shows that he is an officer of immigration, detaining the men under direction of Officer Schell, whose return, filed by leave of court, shows that he is an officer of immigration under control of the Commissioner-General in charge of this port by designation of the Secretary of Commerce and Labor. This seems to show regular and sufficient authority, within the act of 1903 (32 Stat., 828), placing jurisdiction in the Department of Commerce and Labor.

The proofs show that the men came by train and presented themselves for admission, and when reached were informed that they would then be examined as to their right to come in, and that,

being questioned through an interpreter, they said they had been told by their parents that they were born within the United States, of which they had no recollection, and claimed to come in as native-born citizens. That such citizen, of whatever race, on arriving at a port of this country is entitled to come is not questioned or questionable. The contention now is that when such a claim is made the executive officers have not authority to pass upon it, and that it must go for decision, if denied, to courts or judicial officers on some proper proceeding, of which this is said to be one. That the legislative department may exclude any race or classes of any race not citizens from the country, and identify and return those not entitled to come by executive as well as judicial officers seems to be too well settled by numerous and uniform decisions of the Supreme Court to require or warrant citations. And in *Chin Bak Kan* v. *United States* (186 U. S., 193), Mr. Chief Justice Fuller for the court said, after referring to *United States* v. *Wong Kim Ark*, where it was held that Chinese persons born in the United States are citizens:

> It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

It seems equally impossible to hold that when Congress can commit the execution of the law and the decisions of questions arising therein to the decision of executive officers it can not also include the fact as to place of birth. The judicial powers of a commissioner are wholly conferred by act of Congress; and power to decide questions arising in executive proceedings may as well be

conferred upon executive officers as upon others. These questions as to the place of birth of these applicants arose for decision with other questions before this officer, and no other way but for him to decide them is made apparent.

It is claimed that the proceedings of this immigration officer, Schell, did not so conform to the rights of the applicants that the detention pursuant thereto was lawful. In the *Japanese Immigrant Case* (189 U. S., 86, at 100), Mr. Justice Harlan said:

> But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore, it is not competent for the Secretary of the Treasury, or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country and has become subject in all respects to its jurisdiction and a part of its population, although alleged to be illegally here, to be taken into custody and deported

without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

It appears that the immigration officer is governed by Chinese regulations made by the Department of Commerce and Labor, among which are:

Rule 6. Immediately upon the arrival of Chinese persons at any port mentioned in rule 4 it shall be the duty of the officer in charge of the administration of the Chinese-exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their rights to admission, and to permit those proving such right to land.

Rule 7. The examination prescribed in rule 6 should be separate and apart from the public, in the presence of Government officials and such witness or witnesses only as the examining officer shall designate, and if, upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not to make copies of, the evidence upon which the excluding decision is based.

Rule 21. The burden of proof in all cases rests upon Chinese persons claiming the right of admission to or residence within the United States to establish such right affirmatively and satisfactorily to the appropriate Government officers, and in no case in which the law prescribes the nature of the

> evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government.

It also appears that in these cases the officer in charge, with commendable care, informed each applicant that other witnesses would be heard and sent for, if there were any, and that no claim was made that there were any.

In the *Japanese Immigrant Case* Mr. Justice Harlan further said:

> The traverse to the return made by the immigration inspector shows upon its face that she was before that officer, pending the investigation of her right to be in the United States, and made answers to questions propounded to her. It is true that she pleads a want of knowledge of our language; that she did not understand the nature and import of the questions propounded to her; that the investigation made was a "pretended one," and that she did not at the time know that the investigation had reference to her being deported from the country. These considerations can not justify the intervention of the courts.

Here the applicants presented themselves for examination for admission, and were held till, and were present when, it was had, and knew what was going on. They came for the examination, and should have come prepared with any evidence they had and wished to introduce to maintain their claims. That others were kept from them before or during the examination, or any prejudice to them in consequence of the rule is not shown. They had, so far as appears, all the examination they wanted.

The rule of evidence prescribed may put upon the applicants more than proof to the satisfaction of the officer and require that beyond doubt; but the rules of evidence go with the authority to decide, and are included in it; and their correctness or their application furnishes no ground for interference.

Persons remanded.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

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JAMES H. McKENNEY,
Clerk

AH HOW, ALIAS LOUIE AH HOW, APPELLANT,
v.
THE UNITED STATES. } No. 307.

CHU DO, ALIAS CHU GEE, APPELLANT,
v.
THE UNITED STATES. } No. 308.

LEW GUEY, APPELLANT,
v.
THE UNITED STATES. } No. 309.

TOM HONG, ALIAS HOM POE, APPELLANT,
v.
THE UNITED STATES. } No. 310.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
v.
THE UNITED STATES. } No. 311.

YUNG LEE, APPELLANT,
v.
THE UNITED STATES. } No. 312.

LEE KIT, APPELLANT,
v.
THE UNITED STATES. } No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES UPON THE MERITS.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, *v.* THE UNITED STATES.	No. 307.
CHU DO, ALIAS CHU GEE, APPELLANT, *v.* THE UNITED STATES.	No. 308.
LEW GUEY, APPELLANT, *v.* THE UNITED STATES.	No. 309.
TOM HONG, ALIAS HOM POE, APPELLANT, *v.* THE UNITED STATES.	No. 310.
TOM DOCK, ALIAS HOM DOCK, APPELLANT, *v.* THE UNITED STATES.	No. 311.
YUNG LEE, APPELLANT, *v.* THE UNITED STATES.	No. 312.
LEE KIT, APPELLANT, *v.* THE UNITED STATES.	No. 313.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES UPON THE MERITS.

It is respectfully submitted that these appeals should be dismissed or the judgments below

affirmed upon the motions and brief heretofore presented by the Government. Since, however, the court desires further to consider the cases on their merits, I proceed, while not admitting the existence of any real merits in these appeals except in the technical sense of the word, to consideration of the claims involved.

I desire to submit, with great earnestness, the conviction of the Government that the legal exigencies of these cases, and of Chinese-exclusion cases in general, fairly demand that the preliminary motions should be determined, and that the issues should not be disposed of solely on the merits.

These Chinamen were arrested in various Brooklyn laundries as laborers unlawfully in the United States, being without the certificate of registration required by section 6 of the act of May 5, 1892 (27 Stat., 25), as amended by the act of November 3, 1893 (28 Stat., 7). It was not attempted to deny that at the time of arrest these men were laborers, but it was claimed in four of the cases (Ah How, Tom Hong, Tom Dock, and Lee Kit) that at the time of the passage of the acts cited, and for varying periods of time thereafter, they were merchants; in two cases (Chu Do and Lew Guey) the claim was of birth in the United States; and in the remaining case of Yung Lee it was asserted that the Chinaman had been unable to procure a certificate on account of illness.

In three of the "merchant" cases the Chinamen claimed to have been members of the same firm. The testimony in these cases was substantially similar; indeed, in one of them it was stipulated that if the witnesses were called they would testify in that case as they had testified in the previous cases (Tom Hong rec., p. 9). These witnesses, one a collector of rents and the other a truckman, stated in each case that they had known the Chinaman for some years as a member of a particular firm; had seen him there selling goods; were told that he was a member of the firm by other Chinamen connected with the establishment; witnesses did not know in any other way. (Tom Dock, Rec., pp. 10, 13, 16; Lee Kit, Rec., pp. 5, 6, 9.) In the case of Ah How, defendant stated that he was paid wages of $30 a month for working in the store of the firm of which he claimed to be a member; he had no money interest in the firm (Ah How, Rec., p. 6); and another Chinaman testified that he did bookkeeping for the firm (Tom Dock, Rec., p. 7). Defendants all admitted that except for the period covered by their alleged partnership in the mercantile firm they had been engaged in laundry work or other occupation as laborers during their stay in the United States.

In the case of Chu Do the claim of citizenship appears to have been an afterthought. On the first hearing before the commissioner, counsel for the Chinaman moved for his discharge on the

ground, among others common to all the cases, that the Government had failed to make out a case; that it was bound to offer proof that during the years 1892 and 1893 defendant was in the United States and was a Chinese laborer at that time; which motion was denied. (Chu Do, Rec., p. 10.) On the date set for the next hearing counsel obtained an adjournment in order to produce the "father" of the Chinaman, who was asserted to be ill. Further adjournments were had for the same reason, and finally not the father but an "uncle" was produced, who testified that Chu Do was his nephew, was born in San Francisco twenty-six years before, and that he saw him there as an infant (pp. 11, 12). When questioned as to his knowledge of persons and occurrences in San Francisco about that time, witness showed lack of memory, and seemed unable to recall any matter other than the fact of his nephew's birth (p. 16). Chu Do himself offered no testimony.

The claim of citizenship in the case of Lew Guey rested on the Chinaman's oral testimony, and the production of a certificate or copy of docket entries of former Commissioner McGettrick, of Richford, Vt., to the effect that a Chinaman by the name of Lew Guey had been before him in June, 1897, charged with being unlawfully in the United States, and had been discharged "as being a citizen of the United States." The Government objected to the admission of this certificate as in no

sense proving the judgment alleged to have been rendered, and the certificate was finally admitted merely "as showing a hearing before Commissioner McGettrick on the date named in the case of a man by the name of Lew Guey." (Lew Guey, Rec., pp. 9, 10.)

In the case of Yung Lee, defendant claimed that he was ill during the extension of the period within which he was entitled under the acts of 1892 and 1893 to obtain a certificate. His statements were partially corroborated by the same witness who testified in the case of Ah How, who declared that he knew of the illness of defendant, saw him in bed, etc. This witness was unable to state the nature or duration of the indisposition. (Yung Lee, Rec., pp. 5–7.)

The commissioner ordered deportation in all these cases; the orders were affirmed by the district court upon appeal, and thereafter appeals were allowed to this court.

The assignments of error are practically the same in all the cases, and raise no question that has not already been conclusively determined by this court. Those filed in the district court included certain complaints, which have since apparently been abandoned, as, for instance, that the defendants had been arrested without a warrant, and that sections 1046 and 1047, Revised Statutes, operated as a bar to the offense. I have noticed these points fully in the motions already filed.

The errors now assigned present the objection of want of jurisdiction because of the insufficiency of the complaints, and allege that the provisions of the act of May 5, 1892, as amended by the act of 1893, have been repealed by the act of April 29, 1902.

As to any irregularity in the complaints, if such existed, which is not conceded, it was fully cured by the subsequent proceedings. In the case of *Chin Bak Kan* v. *United States* (186 U. S., 193), the Chief Justice, applying the ruling in *Fong Yue Ting* v. *United States* (149 U. S., 729), held that "defects in such complaints or pleadings do not affect the authority of the commissioner or judge or the validity of the statute." (And see also *Chow Loy* v. *United States*, 112 Fed. Rep., 354, 361, citing *Nishimura Ekiu* v. *United States*, 142 U. S., 651, 662.)

The act of April 29, 1902 (32 Stat., 176), has not yet been before the court; but that law expressly reenacts and continues all previous laws on the subject then in force and not inconsistent with treaty obligations (specifically including certain doubtful sections of the act of September 13, 1888); and this court has twice held, the acts of 1892 and 1893 being under consideration, that the treaty of 1894 did *not* repeal existing law. (*United States* v. *Lee Yen Tai*, 185 U. S., 213; *Chin Bak Kan* v. *United States*, *supra*.)

In considering the proceedings before the United States commissioner in these cases it is impossible

to avoid the conclusion that the character of the testimony was for the most part perfunctory and formal; that it utterly failed to support with any conclusiveness either the claim of merchant status or that of citizenship, and amply justified the commissioner's orders of deportation, and his finding as to the merchant claim that the proofs furnished did not "clearly establish facts which would bring these persons within the statute as merchants." When all the circumstances are considered—the arrest of these Chinese laborers in various Brooklyn laundries, three of them claiming to have been members of the same mercantile firm at the same time for the same term of years in New York City, the alleged existence of this firm for but a few years, the Chinamen's admissions that they had been engaged in laundry work from the time of their arrival in this country to the time of their asserted membership in the merchant firm, and that they resumed the laborer status immediately upon the dissolution of the partnership, the validity of their claim appears to be, to say the least, very doubtful.

The term "merchant," as it is used in Chinese exclusion legislation, has been clearly defined by the law and by the decisions of the courts (sec. 2, act of Nov. 3, 1893; *In re Ah Yow*, 59 Fed. Rep., 561; *Lai Moy* v. *United States*, 77 Fed. Rep., 955; *Mar Bing Guey* v. *United States*, 97 Fed. Rep., 576), and has expressly been held not to include bookkeepers and paid assistants in a store (*United*

States v. *Pin Kwan*, 100 Fed. Rep., 609); such persons are either actually or constructively laborers.

The evidence upon which the claim of citizenship rests must also be regarded as wholly inconclusive to show birth in this country, under the decisions of this court and of the lower Federal courts. In *Quock Ting* v. *United States* (140 U. S., 417), where the uncontradicted testimony of the Chinaman and his father was held to be insufficient as amounting to little more than a mere statement of the fact, the court, speaking by Mr. Justice Field, said (pp. 419, 420):

> The testimony given by the petitioner amounted to very little; indeed, it was of no force or weight whatever. The particularity and positiveness with which he stated the place of his birth in San Francisco was evidently the result of instruction for his examination on this proceeding, and not a statement of what he had learned from his parents in years past. * * * The testimony of the father was also devoid of any incident or circumstance corroborative of his statement. * * * It is incredible that a father would allow the exclusion of his son from the country where he lived, when proof of his son's birth and residence there for years could have been easily shown, if such in truth had been the fact.

The court undoubtedly took the same view in the *Chin Bak Kan* case when it referred to the

"mere assertion of citizenship" which "is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency without being able to show that it was ever possessed" (186 U. S., at p. 200).

In *In re Louie You* (97 Fed. Rep., 580), where petitioner claimed to have been born in the United States and to have left the country with his father when 3 years of age, remaining away for sixteen years, three Chinese witnesses corroborating the testimony, the court said:

> I am not willing to establish the precedent of admitting Chinese persons, who have admittedly remained out of the country for so great a length of time. * * * Those who leave the country when infants must not expect to gain ready readmission after they have, in effect, reached maturity. If satisfactory proof of their right to land is not possible in such a case, the fault is theirs. The difficulty is one easily foreseen.

In *United States* v. *Lee Huen* (118 Fed. Rep., 458) Judge Ray, discussing the requirements as to evidence in cases involving the issue of citizenship of a person of Chinese descent, observed that the burden of *proof*, not of evidence merely, is on the defendant; and it was held in that case that evidence from a male person not the father that the defendant was born at a certain time and place in the United States, unaccompanied by any details as to how or why the witness knows such

fact, is not conclusive on the commissioners or court. (See also *In re* Jew Wong Loy, 91 Fed. Rep., 240.)

So, in the light of those decisions, the testimony offered in these cases to show birth within the country is, I submit, inconclusive and unsatisfactory. It amounts to nothing more than mere assertions of the fact, unaccompanied by any corroborative incidents or circumstances, and, in the case of the "uncle's" testimony, lacking in details showing how the witness knew such fact.

It can not be doubted that a commissioner properly and finally passes upon the claim of birth in this country, a claim of fact, as well as upon all other facts. That was expressly decided in Chin Bak Kan's case (186 U. S., at p. 200). It has lately been held that the executive officers at the frontier conclusively pass upon the citizenship claim under their exclusive jurisdiction over the admission of aliens (decisions of Judge Wheeler in the district of Vermont and of Judge Ray in the northern district of New York, not yet reported, but heretofore called to the attention of the court).

As to the McGettrick certificate in the *Lew Guey* case, I repeat that the fraudulent use of such certificates has become notorious; that they have been and still are the subject of widespread barter and sale is well known. But even if genuine the certificate was not properly admissible as evidence. In the case of *United States* v. *Lew Poy Dew* (119

Fed. Rep., 786), where the question at issue was as to the admissibility in evidence of one of these certificates (the wording of which was almost identical with that of the certificate offered in the Lew Guey case), Judge Ray, of the northern district of New York, held that the certificate was not admissible in evidence for any purpose. The learned judge said:

> This certificate is not, and does not purport to be, the judgment or decision of the United States commissioner, Felix W. McGettrick, or a copy thereof. It is a mere recital of certain alleged official acts or transactions of McGettrick as United States commissioner, and of certain proceedings alleged to have been had before him. It * * * is equivalent to a written statement, made and signed by the judge of a court, that he had at a certain time adjudged and determined that certain facts did or did not exist, and had given judgment accordingly. This certificate does not purport to be a copy or a transcript of any decision made, or of any judgment rendered, in any legal proceeding. It is not a certificate authorized by any law, and therefore not an an official act of said commissioner. It is * * * merely a roving general certificate, and is no more evidence in a court of justice to establish the facts recited than would be a letter from the clerk of a court to the complainant in an action that he had entered a judgment, reciting its terms, in his favor on a certain day. * * * No more

> loose, dangerous, and unsatisfactory mode of proving the judgment of a court could be devised than to permit the introduction in evidence, against objection, of the mere unsworn statement of a commissioner that he has made a certain adjudication, when there is no statute making it his duty to make such a certificate. * * * Evidence was given that this man McGettrick was engaged in the business of making and selling such certificates. * * * The commissioner was neither required nor authorized to make this certificate. * * * Clearly it is not evidence or admissible for any purpose.

It is contended that in any event the appellants here claiming citizenship were not subject to deportation for failing to register, since they were minors at the time of the passage of the act of 1893; and, accordingly, having no occupation of their own, could not be regarded as laborers. Counsel cite the case of *Gue Lim* v. *United States* (176 U. S., 459), but that decision, which held that the minor children of a Chinese merchant domiciled in this country may enter without certificates, is not at all applicable to the case of the minor children of a Chinaman who is not a member of the privileged classes, in which category (i. e., of laborers) the fathers of these appellants may be presumed to be in the absence of anything appearing in the records to the contrary. Under the ruling of the commissioner, affirmed by the

district court, appellants were found not to have proved their assertion of American birth. It is undisputed that they are laborers. If they were not born in this country, then, not being the children of domiciled Chinese merchants, they must, whether as minors or otherwise, have entered the United States unlawfully, and are therefore not entitled to remain.

Counsel also contend that in the *Yung Lee* case the commissioner erred in declining to make an order for the issuance of a registration certificate, as provided in section 6 of the act of 1892 as amended by the act of 1893. But the evidence offered in this case was not such as to establish clearly to the satisfaction of the commissioner that Yung Lee was "unable through sickness during all the time given by the statute to obtain a certificate of residence" (Yung Lee, rec., p. 19), and he was very properly adjudged to be unlawfully in the United States.

It is submitted that from the foregoing, and from the motions and reply brief filed for the Government herein, it clearly appears that these appeals are unfounded and without merit; that they raise no new or important questions for consideration, but are based on assignments of error which embrace propositions already conclusively and authoritatively determined by this court. I therefore respectfully submit that the Government's contentions should be upheld, and these appeals forthwith

dismissed (as the preferable course), or, as an alternative, that the judgments below be affirmed; and that, as a preliminary to either result, the orders admitting to bail should be vacated.

HENRY M. HOYT,
Solicitor-General.

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Supreme Court of the United States.

Nos. 307, 308, 309 and 312.—October Term, 1903.

No. 307. Ah How, alias Louie Ah How, Appellant,
vs.
The United States.

No. 308. Chu Do, alias Chu Gee, Appellant,
vs.
The United States.

No. 309. Lew Guey, Appellant,
vs.
The United States.

No. 312. Yung Lee, Appellant,
vs.
The United States.

Appeals from the District Court of the United States for the Eastern District of New York.

[February 23, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

These are appeals from judgments of the United States District Court confirming decisions of a commissioner, and adjudging that the appellants be removed from the United States to China. *Chin Bak Kan* v. *United States*, 186 U. S. 193. The commissioner decided that each of the appellants was a Chinese laborer found without certificate of residence as required by law within the United States, and was not entitled to remain within the United States. The facts may be summed up as follows: The appellants were arrested in July, 1902, when working in laundries, they all having failed to produce certificates of residence when called upon to do so by the Chinese inspector. At the hearing before the commissioner they offered testimony of witnesses other than Chinese that they were residents of the United States on May 5, 1892. Ah How and Chu Do put in evidence that they were not laborers. Yung Lee offered evidence of illness, which he contended made him unable to procure his certificate. Chu Do offered parol evidence that he was born in the United States, and therefore was a citizen, and also that he was a minor during the time allowed by the statute for obtaining a certificate. Lew Guey offered similar evidence and a certificate of another United States commissioner of

a hearing before him and an adjudication that Lew Guey had the right to remain in the United States by reason of being a citizen thereof. The United States offered no evidence beyond the facts stated above.

The ground of appeal common to all the cases is that §§ 3 and 6 of the act of May 5, 1892, 27 Stat. 25, have been repealed. By § 3 any Chinese person arrested under the provisions of the act shall be adjudged to be unlawfully within the United States, unless he shall establish by affirmative proof to the satisfaction of the judge or commissioner his right to remain. Of course, if the burden of proof was on the appellants, the commissioner and judge might not be satisfied by the affirmative evidence produced. We are not asked to review the finding of fact. See *Fong Yue Ting* v. *United States*, 149 U. S. 698, 714, 715. *But it is argued that this* section is done away with by § 1 of the act of April 29, 1902, c. 641, 32 Stat. 176, continuing all laws then in force, "so far as the same are not inconsistent with treaty obligations." It is said that the section is inconsistent with Article 4 of the treaty of December 8, 1894, 28 Stat. 1210, agreeing that Chinese laborers, or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. It is pointed out that the treaty of 1894 with Japan and the treaty of 1859 with Paraguay give the rights and privileges of native citizens to the subjects of those countries in access to the courts and in the defense of their rights, and it is said that the law as to the burden of proof cuts down those privileges and rights. The section has been upheld, however, by this Court, since the treaty, and after the passage of the act. *Chin Bak Kan* v. *United States*, 186 U. S. 193, 200; *United States* v. *Lee Yen Tai*, 185 U. S. 213. It is not repealed by the laws of 1902. The clause of the treaty had a different object, and in view of the difficulties encountered in such an investigation, it could not have been supposed to promise that special measures theretofore taken should not be continued in force for the purpose of ascertaining the very question whether the laborers were lawfully residing in the United States or not. See *Fong Yue Ting* v. *United States*, 149 U. S. 698, 730. But it is enough to say that the treaty itself, in Article 5, expressly refers to the act of 1892 as amended by the act of 1893, and states that the Chinese government will not object to the enforcement of those acts.

It follows still more clearly from the language of Article 5 of the treaty that § 6, as amended by the act of November 3, 1893, 28 Stat. 7, remains in force. *Lee Lung* v. *Patterson*, 186 U. S. 168, 176, 177. That section requires Chinese laborers who are entitled to remain in the United States to obtain a certificate of residence from the collector of internal

revenue of their district, or to be deported, subject to certain excuses. Article 5 of the treaty especially refers to the requirement of registration in the acts of 1892 and 1893, although, as we have said, it states that the enforcement of the acts as a whole will not be objected to. In one or two of the cases there was a suggestion below that § 6 of the act was unconstitutional, but that question was disposed of in *Fong Yue Ting* v. *United States*, 149 U. S. 698, and was not pressed.

The complaints are objected to as insufficient, because in addition to alleging that the appellants are laborers not entitled to remain in the United States without certificates, it adds the words "having come unlawfully into the United States without certificates," thus implying, it is said, that an unlawful coming into the United States could be legalized by obtaining a certificate. It is enough to say that such objections have been answered by *Fong Yue Ting* v. *United States*, 149 U. S. 698, 729, and *Chin Bak Kan* v. *United States*, 186 U. S. 193, 199. In the former it was laid down that "no formal complaint or pleadings are required." That proposition is not affected by the later statutes. We do not mean to imply that there is anything in the objection if we should consider it on its merits.

As to the testimony that two of the appellants were merchants during the period of registration, all that appears is that the commissioner did not believe it. We cannot go outside the record of the specific case for the purpose of inquiring whether the decision was induced by some view of the law which may be open to argument. The same may be said as to the parol testimony as to the age of two of the appellants on their birth in this country. But we may add that it by no means follows from the decision in *United States* v. *Gue Lim*, 176 U. S. 459, that the minor children of laborers, old enough to do work, are not required to have certificates. The language of the statute certainly is broad enough to include them and does not indicate a division by local laws with regard to coming of age. The principle applicable to the admission into this country of the wife and children of a certificated merchant is not the principle applicable to such a case. As to the certificate of the United States commissioner, offered by Lew Guey, it was merely a written statement by the commissioner that a person of that name was brought before him on the usual charge, and was adjudged to have the right to remain in the United States by reason of being a citizen. Apart from the possibility that the commissioner in the present hearing was not satisfied of the identity of the party, such a statement is not the certificate of evidence required by the act of 1892, and is not evidence of a judgment. *United States* v. *Lee Poy Dew*, 119 Fed. Rep. 786. The evidence that Yung Lee was disabled by sickness from obtaining a certificate did not satisfy the commissioner. We cannot say as matter of law that he was bound to be satisfied by the testimony of Yung Lee himself that he was so disabled.

We have assumed, for the purpose of decision, what does not clearly appear from the record, that the judge who tried the case on appeal tried it solely on the commissioner's report of evidence and heard no witnesses. Whether the fact could be assumed if the result would be a reversal of the judgment below, we need not decide. See *United States* v. *Lee Saick*, 100 Fed. Rep. 398, 399. There is no other question worthy of notice. We are asked to express an opinion as to the right of the appellants to give bail pending their appeal, but that now is a moot point. We agree with the Government, that these cases are covered by previous decisions of this Court.

Judgment affirmed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissent.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

Nos. 310, 311 and 313.—October Term, 1903.

Tom Hong, alias Hom Poe, Appellant,		
310	*vs.*	
	The United States.	
Tom Dock, alias Hom Dock, Appellant,		Appeals from the District Court of the United States for the Eastern District of New York.
311	*vs.*	
	The United States.	
	Lee Kit, Appellant.	
313	*vs.*	
	The United States.	

[March 21, 1904.]

These cases were considered together and are appeals from an order entered in the District Court of the United States for the Eastern District of New York, affirming an order made by a United States commissioner, directing the deportation of the appellants from the United States to China upon the ground that they were found within this country without certificates of registration, as required by the act of May 5, 1892, as amended November 3, 1893. (1 Comp. Stat. 1901, 1322.)

The complaint charges that the appellants, being Chinese laborers, not entitled to remain in this country without certificates of registration, did willfully and knowingly fail to obtain the certificates required by law, and, having unlawfully come within the United States, were found without certificates of registration within the jurisdiction thereof, in the Eastern District of the State of New York.

Testimony was heard in the cases, and at the conclusion of the hearings the commissioner made an order finding each of the appellants a Chinese laborer, without a certificate of registration as required by law, and not a merchant doing business within the meaning of the act of 1892 as amended 1893, and not lawfully entitled to remain in this country.

In each of the cases the commissioner, in addition to the judgment just recited, filed a finding, which was made part of the record by order of the District Court, as follows:

"In the matter of Lee Kit, Tom Hong and Tom Dock.

"Before B. L. Benedict, U. S. commissioner.

"In these three cases it is urged on one side that the decision of the Circuit Court of Appeals of this circuit, in the case of *United States* v. *Pin Kwan*, requires the commissioner to decide that these three Chinese persons

were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law, and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case which differed from the present one. Admitting the distinction I do not think the United States commissioner is at liberty to disregard carefully expressed language of the Circuit Court of Appeals for the circuit, even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. If follows that an order for deportation for each one must be made.

"I certify the foregoing to be a true copy of an original decision made by me in the cases of *The United States* v. *Lee Kit*, *The United States* v. *Tom Hong* and *The United States* v. *Tom Dock*, upon application for orders of deportation of the said Lee Kit, Tom Hong and Tom Dock, made on the 18th day of December, 1902, and remaining on file in my office.

[L. S.] B. LINCOLN BENEDICT,
U. S. Comm."

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

The contention of the appellants that their right to remain in the United States is enlarged by the treaty with China of December, 1894, considered with § 1 of the act of April 29, 1902, c. 641, 32 Stat. 176, continuing all laws then in force so far as the same are not inconsistent with treaty obligations in its effect upon the acts of 1892, as amended in 1893, is disposed of by the case of *Ah How* v. *United States*, decided at this term.

For the first time in the history of legislation, having for its purpose the exclusion of certain Chinese from the country, or their deportation when here in violation of the statutes of the United States, and the admission of certain others to the country, or giving the right to remain, Congress, by the act of May, 1892, as amended November 3, 1893, defined those theretofore designated generally as merchants or laborers:

"SEC. 2. The words 'laborer' or 'laborers,' wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant

is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

It is contended by the appellants that as by section six of the act as amended November 3, 1893, it is made the duty of certain Chinese laborers within the limits of the United States to apply to the collector of their respective districts within six months after the passage of the act for a certificate of registration, and in default of compliance with the terms of the act, to be subject to arrest and deportation, unless, for certain reasons given in the statute excusing them, they have been unable to procure the certificate required by law; and as section two of the same act specifically defines what is meant by a "laborer," that only such as come within the statutory provision as "laborers" are liable to deportation upon an affirmative finding of this fact as to the person apprehended.

On the part of the Government, it is contended that when a Chinese laborer is apprehended under this act and found without a certificate, and claiming to have been a merchant during the period of registration, he is subject to deportation unless it is affirmatively shown to the satisfaction of the commissioner or court that he was a merchant, as defined by the statute, during such period of registration.

We do not find it necessary to determine this question in the cases now before us, for in the opinion of the court the testimony shows that the appellants were "merchants" within the definition laid down by the law. The testimony shows, without contradiction and by disinterested witnesses other than Chinese, that the appellants had been in this country for periods varying from ten to thirty years. That in the years from 1891 to 1895 they were carrying on a Chinese grocery in New York, known as the Kwong Yen Ti Company. In that period they bought and sold groceries, kept books of account and had articles of partnership. It is a fact that the testimony does not disclose, as to any of them, that the business was conducted in his name, as the literal interpretation of the law would seem to require, but it was carried on in a company name, which did not include that of any of the partners. The fact of buying and selling at a fixed place of business in a real partnership was established without contradiction.

It is true that after the lapse of so many years the appellants, when taken before the commissioner, were unable to produce the books or articles of copartnership of the firm. But some allowance must be made for the long delay in their prosecution by the government, and the natural loss of such testimony years after the firm's transactions were closed.

The commissioner was doubtless influenced by the intimation in the Pin Kwan case, (100 Fed. Rep. 609,) to the effect that the statutory requirements

as to the conduct of the business in the name of the parties necessitated the appearance of the name in the style in which the business was conducted. But this would be too narrow a construction of the statute. The purpose of the law is to prevent those who have no real interest in the business from making fraudulent claims to the benefits of the act as merchants. The interest in the business must be substantial and real and in the name of the person claiming to own it, but the partner's name need not necessarily appear in the firm style when carried on, as is usual among the Chinese, under a company name, which does not include individual names. The main purpose is to require the person to be a *bona fide* merchant, having in his own name and right an interest in a real mercantile business, in which he does only the manual labor necessary to the conduct thereof. This conclusion has been reached in a number of Federal cases, in which the matter has been given careful consideration. Perhaps the leading one was decided by the Circuit Court of Appeals for the Ninth Circuit, (*Lee Kan* v. *United States*, 62 Fed. Rep. 914,) the opinion being delivered by Mr. Justice McKenna, then circuit judge, in which the subject was so fully considered as to leave little to be added to the discussion. See also *Wong Ah Gah* v. *United States*, (94 Fed. Rep. 831;) *Wong Fong* v. *United States*, (77 Fed. Rep. 168.)

It is true that the findings of the commissioner and in the District Court in cases of this character should ordinarily be followed in this court, and will only be reconsidered when it is clear that an incorrect conclusion has been reached. (*Chin Bak Kan* v. *United States*, 186 U.S. 193–201.) But in the present case no new matter seems to have been admitted in the District Court, and the finding made by the commissioner as to these appellants is of an uncertain nature when the judgment is read in connection with the special finding filed by that officer and made part of the record in each case, in which he says: "The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894."

In this state of the record an examination thereof satisfies us that the appellants adduced testimony which established that they were *bona fide* "merchants" within the meaning of the law at the time registration was required of laborers by the act of Congress, and as the orders of deportation were made on the sole ground that appellants failed to show that fact the

Judgments are reversed and appellants discharged.